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**THE CONFLICT OF LAWS RELATING TO  
BILLS AND NOTES**

**PRECEDED BY A COMPARATIVE STUDY OF THE  
LAW OF BILLS AND NOTES**







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# THE CONFLICT OF LAWS RELATING TO BILLS AND NOTES

PRECEDED BY A COMPARATIVE STUDY  
OF THE LAW OF BILLS AND NOTES

BY

ERNEST G. LORENZEN

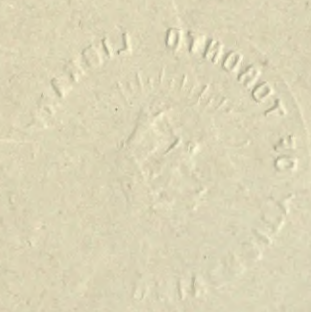
PROFESSOR OF LAW IN YALE UNIVERSITY



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## PREFACE

IN teaching the subject of the conflict of laws the author became satisfied that the American rules relating to bills and notes were in such an unsatisfactory condition that, if possible, a remedy should be provided by means of a uniform act. This conviction led him to make a special study of the subject with a view toward making a preliminary survey which might be useful in drawing up a uniform act for the United States. In the course of his studies he investigated the law of bills and notes of foreign countries, the provisions of the Hague Convention relating to bills and notes, of 1912, and the rules of the conflict of laws in foreign countries so far as they relate to bills and notes. The comparative study of the municipal law of bills and notes was undertaken in order that the discussion of the rules of the conflict of laws might be made with a sufficient knowledge of the conflicts that may actually arise from the divergent legislation on the subject. Without that knowledge the operation of the rules of the conflict of laws relative to bills and notes cannot properly be understood. The results of these studies were published in the Illinois Law Review (Volume XI, pp. 137-158, 247-267), under the title of *The Hague Convention of 1912, relating to bills of exchange and promissory notes: A comparison with Anglo-American Law*, and in the Minnesota Law Review (Volume I, pp. 10-33, 117-134, 239-256, 320-338, 401-428), under the title of *Rules of the conflict of laws applicable to bills and notes: A study in comparative law*.

The articles are reproduced in this work substantially in their original form. In one or two instances it has been found necessary to qualify somewhat the conclusions formerly reached. One new topic has been added, namely, the "Time within which recourse must be taken." The scope of the work has been enlarged throughout by including the law of Latin-America, represented by Argentina, Brazil and Chile, and also that of Japan.

The appendix contains the American Uniform Negotiable Instruments Act, the English Bills of Exchange Act, the Convention of the Hague, and the Uniform Law adopted at The Hague, the two latter appearing both in the original and in an English translation. Comparative tables of sections and articles of the various acts are also to be found in the appendix.



The author desires to express his thanks to the Illinois Law Review and to the Minnesota Law Review for their courtesy in permitting a republication of the articles, to Professor Wesley N. Hohfeld, Professor of Law in Yale University, for his warm interest in the publication of the present volume and for many helpful suggestions and criticisms, and to Mr. Sidney W. Davidson, Secretary of the Yale Law Journal, for his valuable assistance in the preparation of the manuscript for the press.

E. G. L.

New Haven, Connecticut.



## NOTE

THE bibliography should be consulted for titles of works referred to in the footnotes. Only the name of the author and the page or section of his work ordinarily appear in the footnotes.

The bibliography may be found beginning on page 321.







# CONTENTS

## PART I

### COMPARISON OF THE ANGLO-AMERICAN LAW OF BILLS AND NOTES WITH THE PROVISIONS ADOPTED BY THE CONVENTION OF THE HAGUE OF 1912

	PAGE
Preface . . . . .	5
Chapter I.	
The Convention of the Hague . . . . .	17
Chapter II.	
The Uniform Law adopted at the Hague and the Anglo-American Law contrasted . . . . .	20
I. Form and interpretation . . . . .	20
1. Unconditional order or promise to pay . . . . .	20
2. A sum certain . . . . .	20
3. Installments . . . . .	21
4. Money . . . . .	21
5. To order . . . . .	21
6. Or bearer . . . . .	22
7. Designation as bill or note . . . . .	24
8. Other formal requisites . . . . .	25
9. Additional provisions or clauses . . . . .	26
10. Delivery . . . . .	26
11. Interpretation . . . . .	27
II. Consideration . . . . .	28
III. Cover . . . . .	29
IV. Negotiation . . . . .	30
1. In general . . . . .	30
2. Indorsement by way of pledge . . . . .	31
3. Indorsement after maturity . . . . .	32
V. Guaranty of bills and notes ( <i>aval</i> ) . . . . .	32
VI. Presentment for acceptance—Acceptance . . . . .	34
VII. Maturity . . . . .	38
VIII. Recourse for non-acceptance and non-payment . . . . .	39
1. In general . . . . .	39
2. Presentment for payment and protest . . . . .	40
3. Notice . . . . .	43
4. Act of God . . . . .	44
5. Other excuses dispensing with presentment, notice, or protest . . . . .	45
6. Remedies where recourse is lost . . . . .	46

	PAGE
IX. Rights and liabilities of parties . . . . .	47
1. Drawing without recourse . . . . .	47
2. Forged indorsements . . . . .	47
3. Warranties and admissions . . . . .	49
4. Defences . . . . .	49
5. Amount of recovery . . . . .	50
6. Partial payments . . . . .	52
7. Payment into court . . . . .	52
8. Statute of limitations . . . . .	53
X. Acceptance and payment for honor—Referee in case of need .	53
1. In general . . . . .	53
2. Acceptance for honor . . . . .	54
3. Payment for honor . . . . .	55
XI. Bills in a set . . . . .	56
XII. Copies . . . . .	56
XIII. Conflict of laws . . . . .	57
XIV. Stamp duties . . . . .	58
XV. Promissory notes . . . . .	58

## PART II

THE RULES OF THE CONFLICT OF LAWS RELATING TO BILLS AND  
NOTES

## Chapter I.

Capacity . . . . .	61
I. In general . . . . .	61
II. Anglo-American law . . . . .	61
1. English law . . . . .	61
2. American law . . . . .	63
III. Continental law . . . . .	65
1. French law . . . . .	65
2. German law . . . . .	66
3. Italian law . . . . .	67
IV. Latin-American law . . . . .	68
1. Convention of Montevideo . . . . .	68
2. Argentine law . . . . .	68
3. Brazilian law . . . . .	69
4. Chilean law . . . . .	69
V. Japanese law . . . . .	69
VI. Convention of the Hague . . . . .	70
VII. Discussion . . . . .	70

## Chapter II.

Formal and essential validity . . . . .	86
I. In general . . . . .	86
II. Anglo-American law . . . . .	87
1. English law . . . . .	87
2. American law . . . . .	87



# CONTENTS

	11
	PAGE
III. Continental law . . . . .	91
1. French law . . . . .	91
2. German law . . . . .	92
3. Italian law . . . . .	94
IV. Latin-American law . . . . .	94
1. Convention of Montevideo . . . . .	94
2. Argentine law . . . . .	94
3. Brazilian law . . . . .	95
4. Chilean law . . . . .	95
V. Japanese law . . . . .	95
VI. Convention of the Hague . . . . .	95
VII. Discussion . . . . .	95

## Chapter III.

Obligation . . . . .	104
I. General questions . . . . .	104
1. The governing law . . . . .	104
a. Anglo-American law . . . . .	104
(1) English law . . . . .	104
(2) American law . . . . .	105
b. Continental law . . . . .	105
(1) French law . . . . .	105
(2) German law . . . . .	106
(3) Italian law . . . . .	106
c. Latin-American law . . . . .	106
(1) Convention of Montevideo . . . . .	106
(2) Argentine law . . . . .	107
(3) Brazilian law . . . . .	107
(4) Chilean law . . . . .	108
d. Japanese law . . . . .	108
e. Discussion . . . . .	108
2. Relationship of the different contracts . . . . .	121
a. Theory of the independence of the different con- tracts . . . . .	121
(1) Anglo-American law . . . . .	121
(a) English law . . . . .	121
(b) American law . . . . .	122
(2) Continental law . . . . .	122
(a) French law . . . . .	122
(b) German law . . . . .	122
(c) Italian law . . . . .	122
(3) Latin-American law . . . . .	123
(4) Japanese law . . . . .	123
b. Theory that a single law should prevail . . . . .	124
c. Resolutions of the Institute of International Law . . . . .	125
d. Discussion of foregoing theories . . . . .	126
e. Limits of the theory of the independence of the different contracts . . . . .	128

	PAGE
II. Specific questions . . . . .	134
1. Effect and negotiation in another state . . . . .	134
2. Law governing holder's title . . . . .	135
a. Anglo-American law . . . . .	135
(1) English law . . . . .	135
(2) American law . . . . .	136
b. Foreign law . . . . .	136
c. Discussion . . . . .	136
3. Holder in due course . . . . .	140
4. Maturity . . . . .	142
a. In general . . . . .	142
b. Anglo-American law . . . . .	143
(1) English law . . . . .	143
(2) American law . . . . .	143
c. Continental law . . . . .	143
(1) German law . . . . .	143
(2) Italian law . . . . .	144
d. Convention of the Hague . . . . .	144
e. Discussion . . . . .	144
5. Presentment for acceptance . . . . .	145
a. English law . . . . .	145
b. French law . . . . .	146
c. Italian law . . . . .	146
d. Discussion . . . . .	146
6. Presentment for payment, protest, and notice . . . . .	148
a. Necessity of presentment, protest, and notice . . . . .	148
b. Time and mode of presentment, protest, and notice . . . . .	150
(1) Anglo-American law . . . . .	150
(a) English law . . . . .	150
(b) American law . . . . .	150
(2) Continental law . . . . .	151
(a) German law . . . . .	151
(b) Italian law . . . . .	151
(3) Latin-American law . . . . .	151
(4) Japanese law . . . . .	151
(5) Convention of the Hague . . . . .	151
(6) Discussion . . . . .	152
7. Vis major—Moratory laws . . . . .	156
a. Vis major . . . . .	156
b. Moratory laws . . . . .	158
8. Payment . . . . .	162
9. Time within which recourse must be taken . . . . .	164
a. Anglo-American law . . . . .	164
b. Continental law . . . . .	165
(1) French law . . . . .	165
(2) German law . . . . .	166
(3) Italian law . . . . .	166
c. Latin-American law . . . . .	166
d. Discussion . . . . .	166



## CONTENTS

	13 PAGE
10. Amount of recovery . . . . .	167
a. In general . . . . .	167
b. Anglo-American law . . . . .	168
(1) English law . . . . .	168
(2) American law . . . . .	169
c. Continental law . . . . .	169
(1) French law . . . . .	169
(2) German law . . . . .	169
d. Discussion . . . . .	170
11. Acceptance and payment for honor . . . . .	174
12. Renvoi . . . . .	175

## PART III

## APPENDICES

A. The Uniform Negotiable Instruments Act . . . . .	179
B. The English Bills of Exchange Act . . . . .	215
C. The Convention of the Hague and the Uniform Law . . . . .	251
I. Convention of the Hague . . . . .	251
II. Uniform law . . . . .	264
D. Comparative Tables . . . . .	299
Table of Cases . . . . .	315
Bibliography . . . . .	321
Index . . . . .	329





## PART I

COMPARISON OF THE ANGLO-AMERICAN LAW OF BILLS  
AND NOTES WITH THE PROVISIONS ADOPTED BY  
THE CONVENTION OF THE HAGUE OF 1912





## CHAPTER I: THE CONVENTION OF THE HAGUE

NOTWITHSTANDING its common origin, the law relating to bills of exchange has assumed a great variety of forms in the different countries. Three principal systems developed: the French, the German, and the Anglo-American.<sup>1</sup> The greatest divergence existed in matters of detail. Even in the most recent times there were not less than forty different bills of exchange acts outside the Anglo-American group. With the rapid growth of international trade during the last century, the advantages of a uniform commercial law among the civilized nations of the world became more and more apparent. Especially in the matter of bills and notes, it seemed that such unification was within the realm of actual realization. At the beginning of the twentieth century the time appeared ripe for the consummation of this plan. At a conference which met at The Hague in 1910, an advance draft of a uniform law relating to bills and notes was prepared. At a second conference in 1912, a Uniform Law was actually adopted.<sup>2</sup> The convention entered into as a result of these conferences, has been signed by Argentina, Austria, Belgium, Brazil, Bulgaria, Chile, Costa Rica, Denmark, France, Germany, Guatemala,

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<sup>1</sup> The following are the principal countries belonging to the French group: Argentine Republic, Bolivia, Brazil, Chile, Colombia, Ecuador, Egypt, France, Greece, Guatemala, Hayti, Luxemburg, Monaco, Mexico, Netherlands, Nicaragua, Panama, Paraguay, Polish Russia, Serbia, Turkey, Uruguay.

The following are the principal countries belonging to the German group: Austria-Hungary, Bulgaria, Denmark, Germany, Italy, Japan, Norway, Peru, Portugal, Rumania, Russia (exclusive of Polish Russia), Salvador, Sweden, Switzerland, Venezuela.

Dr. Felix Meyer, in his *Weltwechselrecht*, vol. 1, p. 26, assigns Belgium, Cuba, Honduras, Malta, the Philippines, Porto Rico, and Spain to a fourth group which stands intermediate between the French and German groups.

<sup>2</sup> The proceedings of these conferences were published officially under the title of *Conférence de la Haye pour l'Unification du Droit relatif à La Lettre de Change, 1910, Actes, 388; Documents, 429; 1912, Actes, I, 264; ibid. II, 421; Documents, I, 247; ibid. II, 147*. They are also contained in translated form in two reports to the Secretary of State by Mr. Charles A. Conant, American delegate to the conferences, which are printed as Sen. Doc. 768, 61st Congr. 3d sess., and as Sen. Doc. 162, 63d Congr. 1st sess.

Holland, Hungary, Italy, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, Panama, Paraguay, Russia, Salvador, Serbia, Sweden, Switzerland, Turkey. The British and American delegates made it clear at both conferences that Great Britain and the United States, though greatly interested in the international unification of the law, were not in a position to become parties to an international convention.

The signatory powers to the convention have assumed the obligation to adopt the Uniform Law textually without any derogations, except so far as they may be expressly authorized by the convention itself.<sup>3</sup> As long as the convention is in force in a given country, its provisions are to supplant wholly the former national law. It deals with the entire subject of bills and notes, and does not apply solely to international operations. The contracting powers are not bound indefinitely, however, and may denounce the convention after three years from the date of the first deposit of ratifications. Defects in the present convention are to be corrected at a future conference which shall be called by the government of the Netherlands after a lapse of five years from the first deposit of ratifications, or after the lapse of two years upon the request of any five contracting states.<sup>4</sup>

Notwithstanding the above provisions for the denunciation of the convention and its modification at a future conference, it was impossible to reach an agreement on all points. In regard to some matters, the national law seemed so important to certain countries that rather than make concessions with respect to them, they preferred not to become parties to the proposed convention. Reservations had to be

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The original proceedings will be cited in this work as *Actes, 1910, 1912*; *Documents, 1910, 1912*. The proceedings in their translated form will be referred to as *Proceedings, 1910, 1912*.

At the second conference an advance draft of a uniform law relating to checks was adopted; this is to be the subject of further consideration at another conference.

<sup>3</sup>At a meeting of the International High Commission held at Buenos Ayres Apr. 3-12, 1916, at which were represented Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Hayti, Honduras, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay, and Venezuela, the provisions of the Hague Convention and Uniform Law were unanimously approved except the articles relating to the law governing capacity in the conflict of laws (art. 74 of the Uniform Law and arts. 18 and 20 of the Convention). As there was a sharp division of opinion among the delegates whether the principle of nationality laid down by the Hague Convention should be sanctioned in preference to the law of domicile now controlling in a number of South American states, the matter was referred to a subsequent conference. See Sen. Doc. 739, 64th Congr. 2d sess. 113.

<sup>4</sup>See arts. 1, 27-30 of Convention.



made in these instances in favor of the national law of the contracting states.<sup>5</sup>

Although the Convention of the Hague has not yet been ratified by any of the signatory powers it expresses nevertheless the general point of view obtaining in foreign countries with reference to bills and notes. It may properly serve, therefore, as a basis of comparison between the Anglo-American system and that of other countries.

The most striking contrast between the Uniform Law and the English and American acts is due to the fact that the Uniform Law deals only with the so-called "formal" law of bills and notes. In this respect it follows the German Bills of Exchange Law of 1849. When a uniform bills of exchange act was drafted for the different states belonging to the Zollverein, the diversity of the systems of law existing in the states, made it evident that unless all rules which had direct reference to the general law were eliminated, it would fail of adoption. So it came that the German Bills of Exchange Law embraced only the "formal" law relating to bills and notes, that is, the special rules resulting from the formal nature of the instrument. The same necessity of eliminating all rules directly connected with the general law presented itself at the Hague conferences. No agreement whatever could have been reached except as to the "formal" law relating to bills and notes. Many provisions found in the Bills of Exchange Act and the Negotiable Instruments Law are excluded from the Uniform Law for the simple reason that they were deemed to fall outside of the "formal" law of bills of exchange.

Another difference which is very prominent consists in the fact that with regard to almost all of the topics treated, both the Bills of Exchange Act and the Uniform Negotiable Instruments Act go into greater detail than does the Uniform Law. This difference is due not so much to the circumstance that the Uniform Law is an international code which, for practical reasons, must be expressed in more general terms than a national law,<sup>6</sup> as to a fundamental difference in the aims of the Anglo-American and the continental legislators in the matter of codification. The Bills of Exchange Act and the Uniform Negotiable Instruments Act are primarily re-enactments of the law laid down by the courts. So far as the courts have dealt with the matter, the English and American acts lay down specific rules. Continental codes, on the other hand, usually prescribe only general rules which the judges apply in a particular case as justice may demand.

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<sup>5</sup> These reservations are found in arts. 2-22 of the Convention.

<sup>6</sup> The Uniform Law goes actually into greater details than many of the national laws.

## CHAPTER II: THE UNIFORM LAW ADOPTED AT THE HAGUE AND THE ANGLO- AMERICAN LAW CONTRASTED<sup>7</sup>

### I. FORM AND INTERPRETATION.

#### 1. *Unconditional Order or Promise to Pay.*

This requirement results from the very nature of the instruments; with respect to it there can be no disagreement. In Anglo-American law an unqualified order or promise to pay is unconditional, though coupled with: (1) an indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or (2) a statement of the transaction which gives rise to the instrument.<sup>8</sup> Whether such additional provisions would be allowed in the continental countries is doubtful. There is no express provision with reference to this question in the Uniform Law.

#### 2. *A sum certain.*

The Uniform Law allows no stipulation for interest except in bills and notes payable at sight, or a certain time after sight. In any other case the stipulation is void. If the rate of interest is not fixed in the bill it is to be five per cent. Interest is to run from the date of the instrument if no other date is specified.<sup>9</sup>

These provisions adopt a middle ground between the Anglo-American view and the rule formerly prevailing in many of the continental countries. In Austria, for example, a stipulation for interest made the bill of exchange void.<sup>10</sup> In Germany,<sup>11</sup> and in most of the other countries belonging to the German group,<sup>12</sup> such a stipulation was deemed not written. The Hague Convention does not authorize a stipulation for interest with respect to bills and notes having a fixed day of maturity, because the amount of interest can in these cases

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<sup>7</sup> The Convention and Uniform Law are printed in the original French and in an English translation in Appendix C to this work.

<sup>8</sup> N. I. L. sec. 3; B. E. A. sec. 3 (3).

<sup>9</sup> Arts. 5, 79.

<sup>10</sup> 1 Meyer, 106.

<sup>11</sup> Art. 7, German Bills of Exchange Law.

<sup>12</sup> 2 Meyer, 106.



be accurately ascertained when the instrument is drawn, and can, therefore, be added to the principal sum.<sup>13</sup>

### 3. *Installments, etc.*

Bills and notes payable in installments are void under the Uniform Law,<sup>14</sup> which follows the view adopted by a number of continental countries.<sup>15</sup> Nothing is said about bills payable with exchange, or with costs of collection, or with an attorney's fee. In some countries such a provision may render the instrument void; in others it will probably be deemed not written, and will, therefore, not affect its validity.<sup>16</sup>

### 4. *Money.*

According to the Uniform Law the parties may expressly stipulate that the holder may demand payment in a specified foreign currency.<sup>17</sup> In England and in the United States, such instruments would not be bills or notes.<sup>18</sup>

### 5. *To Order.*

The Uniform Law agrees with the Anglo-American and German<sup>19</sup> law in allowing non-negotiable bills and notes. Although non-negotiable instruments have little importance in dealings among merchants or in international transactions, it was deemed unnecessary to adopt the principle of the French group, which requires negotiability as one of the essential elements of bills and notes.<sup>20</sup> According to the Uniform Law, a non-negotiable bill is transferable only in the form and with the effect of an ordinary assignment.<sup>21</sup>

Likewise in England and in the United States the indorsement of a non-negotiable bill or note operates merely as a transfer of the rights of the indorser. With respect to the nature of the liability of such

<sup>13</sup> *Proceedings*, 1910, 238; *Actes*, 1910, 78.

<sup>14</sup> Art. 32, par. 2.

<sup>15</sup> 1 Meyer, 127.

<sup>16</sup> See 1 Meyer, 98.

<sup>17</sup> Art. 40. See also art. 79. A request of the Mexican delegation that the contracting states be permitted to provide that notwithstanding a stipulation requiring actual payment in foreign money, payment might always be made in the national currency, was denied because such a stipulation was deemed to afford "the only means of doing business with some security in countries where the national currency, as a result of unforeseen circumstances, may be subjected to sharp fluctuations in value." *Proceedings*, 1912, 313; *Actes*, 1912, I, 174.

<sup>18</sup> A bill or note must be payable in "money," i.e., legal tender. Chalmers, 10.

<sup>19</sup> See art. 9, German Bills of Exchange Law.

<sup>20</sup> Art. 110, French Commercial Code; 1 Meyer, 134; 4 Lyon-Caen & Renault, 53; Thaller, 691; Williamson, 11.

<sup>21</sup> Art. 10, par. 2. The same is true of non-negotiable notes. See art. 79.

indorser there is no uniformity of view. In the United States the indorser of a non-negotiable note is sometimes regarded, as under the Uniform Law, as a mere assignor.<sup>22</sup> In other jurisdictions his liability appears to be that of a maker or a guarantor.<sup>23</sup> In still others he is regarded as an indorser.<sup>24</sup> In England the indorser of a non-negotiable bill is in the nature of a new drawer.<sup>25</sup>

Negotiability not being deemed an essential requisite, the question arose at the first Hague Conference whether the intent to execute a negotiable instrument should be expressed or presumed. Inasmuch as negotiability is in modern times the rule and non-negotiability the great exception, most legislators dealing with the subject since the German Bills of Exchange Law have deemed negotiability a natural quality which should impose upon the person executing the instrument the duty of indicating the contrary intent by appropriate words.<sup>26</sup> The Bills of Exchange Act accepted this point of view as a concession to Scotland, where the principle had been established as early as the year 1726.<sup>27</sup> A like change was not made in the Uniform Negotiable Instruments Act, which re-enacts the old rule that words of order or bearer are necessary to give negotiability to the instrument.<sup>28</sup> The Uniform Law adopts the modern view that negotiability should be presumed in the absence of words indicating a contrary intent.<sup>29</sup>

#### 6. *Or Bearer.*

Bills of exchange payable to bearer are almost of equal age with

<sup>22</sup> *Story v. Lamb* (1884) 52 Mich. 525.

<sup>23</sup> *McMullen v. Rafferty* (1882) 89 N. Y. 456; *Johnson v. Lassiter* (1911) 155 N. C. 47.

<sup>24</sup> *First Nat. Bank v. Falkenhan* (1892) 94 Calif. 141.

<sup>25</sup> Wood's Byles, 149.

<sup>26</sup> 1 Meyer, 134-135; art. 9, German Bills of Exchange Law.

<sup>27</sup> *Crichton v. Gibson* (1726) Morr. 1446; Thompson, 85.

<sup>28</sup> Sec. 1 (4). In jurisdictions in which bills and notes need not be designated as such (see *infra*, p. 24) words of negotiability may serve to distinguish them from other similar instruments.

That the words "or order" might serve this purpose was admitted at the conference of Leipzig, which drafted the German Bills of Exchange Law. Thöl, *Protokolle*, 14.

<sup>29</sup> Art. 10, par. 1. It is interesting to note the development of the law concerning the negotiability of bills of exchange. Until the end of the sixteenth century, it seems, bills of exchange were exclusively non-negotiable. Negotiability was recognized only after a considerable struggle, and was not fully established until the middle of the seventeenth century. See Biener, 121; 1 Goldschmidt, 449; 1 Grünhut, 90-95. Words of negotiability ("or order") were required in all countries, excepting Scotland, until 1849, when the German Bills of Exchange Law recognized negotiability as a natural but non-essential quality of all bills and notes.



bills payable to order.<sup>30</sup> They were prohibited, however, in France, in 1716,<sup>31</sup> and are now allowed in none of the continental countries.<sup>32</sup> Promissory notes payable to bearer are authorized in the countries belonging to the French group.<sup>33</sup> Anglo-American countries and Japan are practically the only ones recognizing bills of exchange payable to bearer. The Advance Draft prepared at the Hague Conference accepted the Anglo-American view, but allowed each contracting state to prohibit bills in this form if they were drawn, payable, accepted, or guaranteed within its limits.<sup>34</sup> At the conference of 1912, it was decided to omit all direct reference to the subject; this decision remits the matter to the national legislation of the countries concerned.<sup>35</sup>

The arguments advanced against the recognition of instruments payable to bearer were the following: (1) there is no demand for them; (2) they are less easy to discount than bills to order; (3) the creation of such bills of exchange might impair the privileges of the establishments which issue bank notes.<sup>36</sup> For those familiar with Anglo-American law, it is difficult to appreciate the force of the last argument. Certainly no such results have happened in England or in the United States. The other arguments reveal the typical attitude of continental legislation with regard to bills and notes. It manifests a tendency to tell bankers and business men what they can do instead of merely fixing limits beyond which, on grounds of policy, they are not allowed to go. The recognition of blank indorsements was not deemed a sufficient reason for allowing bills and notes to be made originally payable to bearer. The person executing the instrument having created an instrument payable to order, it seemed inadmissible to permit its character to be changed by a subsequent holder. While an indorsement in blank may enable a bill or note payable to order to circulate as if made payable to bearer, such an instrument differs, nevertheless, from one originally payable to bearer in that each holder has the power to prevent its further negotiation by mere delivery by filling out the blank indorsement, or by indorsing the bill or note specially.<sup>37</sup> In Anglo-American law the blank indorsement of an

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<sup>30</sup> 1 Goldschmidt, 448.

<sup>31</sup> 1 Savary, 214-216.

<sup>32</sup> 1 Meyer, 116-117.

<sup>33</sup> 1 Meyer, 117; 4 Lyon-Caen & Renault, 413.

<sup>34</sup> See art. 3, par. 4, of the proposed Uniform Law and art. 3 of the proposed Convention of 1910: *Proceedings*, 1910, 34, 40.

<sup>35</sup> *Proceedings*, 1912, 275; *Actes*, 1912, I, 79.

<sup>36</sup> *Proceedings*, 1910, 237; *Actes*, 1910, 77.

<sup>37</sup> See Kuntze, 452; Pappenheim, 74; Brunner, 193-194.

instrument payable to order converts it into one payable to bearer, where it is the only or last indorsement.<sup>38</sup> Where a blank indorsement is followed by a special indorsement, the instrument is payable to order, so that the indorsement of the special indorsee is required for its further negotiation.<sup>39</sup>

#### 7. *Designation as Bill or Note.*

The Uniform Law requires for the validity of a bill its designation as a bill of exchange in the body of the instrument.<sup>40</sup> According to article 2 of the Convention, however, any contracting state may prescribe that bills of exchange issued within its own territory which do not bear the designation "bill of exchange," shall be valid, provided they contain the express indication that they are payable to order.

The requirement of designation as a bill of exchange is of German origin and is of comparatively recent date.<sup>41</sup> It was introduced into German law at the end of the eighteenth century through the decisions of the courts, which followed the views of text-writers, and it became finally established through the German Bills of Exchange Law of 1849. Since that time it has become a legal requisite for the validity of bills and notes in nearly all of the countries belonging to the German group.<sup>42</sup> Such a requirement furnishes, of course, a ready means to distinguish bills and notes from other similar instruments. The necessity of a designation was strong when the remedy of imprisonment for debt was open to the holder of bills and notes in case of non-payment. Although imprisonment for debt has been generally abolished, bills and notes are still subject in many countries to special and rigorous rules. The procedure is often summary, and in some countries a bill or note is subject to execution as such. Moreover, in certain countries,—as, for example, Germany—the designation of a bill of exchange as such in the instrument, appears to be the only means by which it can be distinguished from a "commercial order." It was natural, therefore, that the German delegates at the Hague confer-

<sup>38</sup> N. I. L. sec. 9 (5); B. E. A. sec. 8 (3).

<sup>39</sup> Before the B. E. A., where a blank indorsement was followed by a special indorsement, the instrument remained payable to bearer: *Smith v. Clarke* (1794) Peake, 225. Prior to the N. I. L. the doctrine of *Smith v. Clarke* was followed in the United States: see *Curtis v. Sprague* (1876) 51 Calif. 239; Daniel, sec. 696. According to art. 40 of the N. I. L., "where an instrument, [originally ?] payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement."

<sup>40</sup> Art. 1 (1). The same is true of promissory notes: see art. 79.

<sup>41</sup> 14 Weiske, 215, n. 39.

<sup>42</sup> 1 Meyer, 137; art. 4 (1) German Bills of Exchange Law.

ences should advocate the requirement of designation for the Uniform Law. They were opposed in this regard by the French delegates, who, if a change was to be made in their law, preferred the English system.<sup>43</sup> The English delegates also argued against the advisability of increasing the formalism in the law of bills and notes by the addition of a mere formal requirement. To the English bankers it appeared to be both 'needless and vexatious.'<sup>44</sup> The uncompromising attitude of the delegates made an agreement upon this subject impossible and led to the compromise contained in article 2 of the Convention, mentioned above.

#### 8. Other Formal Requisites.

The other formal requisites of a bill of exchange<sup>45</sup> under the Uniform Law are the following:

- (1) The name<sup>46</sup> of the drawee.<sup>47</sup>
- (2) An indication of the date of maturity. If the time for payment is not indicated, it is deemed payable at sight.<sup>48</sup>
- (3) Indication of place of payment. If none is indicated, the place specified beside the name of the drawee is deemed the place of payment.<sup>49</sup>
- (4) The name of the payee.<sup>50</sup>
- (5) An indication of the date and of the place where the bill is issued.<sup>51</sup> Where a bill of exchange does not bear the name of the place at which it was issued, it is deemed drawn at the place designated beside the place of the drawer.<sup>52</sup>

<sup>43</sup> *Proceedings*, 1910, 81; *Actes*, 1910, 29.

<sup>44</sup> *Memorandum of Committee on Bills of Exchange*, Institute of Bankers, reprinted in Mr. Conant's report, *Proceedings*, 1912, 388.

<sup>45</sup> The requirements for a note are similar: art. 77.

<sup>46</sup> Each contracting state has the power, so far as regards obligations assumed with reference to bills or notes within its own territory, to determine the manner of providing a substitute for signature, provided that a formal declaration inscribed on the bill or note verifies the intent of the person who should have signed. Art. 3, Convention.

<sup>47</sup> Art. 1 (3).

<sup>48</sup> Arts. 1 (4), 2, par. 2.

<sup>49</sup> Arts. 1 (5), 2, par. 3.

<sup>50</sup> Art. 1 (6).

<sup>51</sup> Art. 1 (7). The date appeared necessary: (1) to ascertain whether the stamp laws have been complied with; (2) to determine whether the drawer or maker had capacity to bind himself by a bill or note; (3) to ascertain the date of presentment in case of bills payable at sight or at a certain time after sight. *Proceedings*, 1910, 203; *Actes*, 1910, 330. The practice of Anglo-American law which gives the holder the right to fill in the date (N. I. L. sec. 13; B. E. A. sec. 12) seemed too dangerous. *Proceedings*, 1912, 398.

<sup>52</sup> Art. 2, par. 4.



(6) Signature of the drawer.<sup>53</sup>

An instrument deficient in any formal respect is not valid as a bill or note.<sup>54</sup>

It is obvious from the above provisions that the Uniform Law contains stricter formal requirements than does the Anglo-American law. In England and in the United States the validity of a bill or note is not affected by the fact that it is not dated,<sup>55</sup> or does not specify the place where it is drawn,<sup>56</sup> or does not specify the place where it is payable.<sup>57</sup> The name of the drawee and payee need not be given, it being sufficient that these parties are indicated in the instrument with reasonable certainty.<sup>58</sup> Again, a bill or note may be payable at a determinable future time.<sup>59</sup> Such an instrument is void under the Uniform Law, except in the case of bills payable at sight or a certain time after sight.<sup>60</sup>

9. *Additional Provisions or Clauses.*

There are no provisions in the Uniform Law corresponding to section 5 of the Uniform Negotiable Instruments Act, nor is there any general rule from which one can ascertain the effect upon the validity of the instrument of additional stipulations. In view of the fact that the different continental countries have taken various attitudes with reference to such clauses,<sup>61</sup> different results will, no doubt, be reached under the Uniform Law.

10. *Delivery.*

According to the Negotiable Instruments Law:<sup>62</sup>

"Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. . . . But where the instrument is in the hands of a

<sup>53</sup> Art. 1 (8).

<sup>54</sup> Art. 2, par. 1. Does this also hold true in the case where the name of the payee is omitted? There is no express provision on the point in the Uniform Law. The Central Committee at the Conference of 1910 decided that they should be considered as bills of exchange in blank. *Proceedings, 1910*, 203; *Actes, 1910*, 329-330.

<sup>55</sup> N. I. L. sec. 6 (1); B. E. A. sec. 3 (4).

<sup>56</sup> N. I. L. sec. 6 (3); B. E. A. sec. 3 (4) (c).

<sup>57</sup> N. I. L. sec. 6 (3); B. E. A. sec. 3 (4) (c).

<sup>58</sup> N. I. L. secs. 1 (5), 8, last par.; B. E. A. secs. 6 (1), 7 (1).

<sup>59</sup> N. I. L. secs. 1 (3), 4; B. E. A. secs. 3 (1), 11.

<sup>60</sup> Arts. 1 (4), 32. Another qualification is found in art. 6 of the Convention, which reserves to the contracting states the right, within their own territory, to allow bills payable at a fair, and to fix the date of their maturity.

<sup>61</sup> Lyon-Caen & Renault, 86 *et seq.*; Staub, art. 4, notes 55 *et seq.*; 1 Grünhut, 468.

<sup>62</sup> Sec. 16.

holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed."

The only express provision on the subject in the Uniform Law is found in article 28, according to which an acceptor may cancel his acceptance before delivery of the bill, except where he cancelled it after having informed the holder or any other signer in writing that he has accepted.<sup>63</sup> All other contracts on the instrument will likewise probably be deemed revocable until delivery.<sup>64</sup> From article 15 of the Uniform Law it is clear that the want of delivery cannot be set up against the person who acquired title to the instrument in good faith and in the exercise of due care by an uninterrupted series of indorsements.

### 11. *Interpretation.*

There is an express provision in the Uniform Law<sup>65</sup> that where the amount is written several times, either in words or in figures, the sum payable shall in case of discrepancy be the smaller sum. The Bills of Exchange Act and the Negotiable Instruments Law are silent on the subject.<sup>66</sup>

Article 8 of the Uniform Law makes any one personally liable who, without due authorization, adds to his signature on a bill of exchange words indicating that he signs in a representative capacity. This agrees with the law as laid down in the Negotiable Instruments Law,<sup>67</sup> which followed the German law in this regard.<sup>68</sup> Article 95 of the German Bills of Exchange Law imposes upon the agent the same liability as would have rested upon the principal had the agent been authorized to bind him. He is under no liability, therefore, if the

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<sup>63</sup> The B. E. A. provides likewise that an acceptance written on the bill is irrevocable after the drawee has given notice to or according to the directions of the person entitled to the bill that he has accepted. B. E. A. sec. 21 (1).

<sup>64</sup> For the antecedent law see 1 Meyer, 41-44.

<sup>65</sup> Art. 6, par. 2.

<sup>66</sup> In Chalmers, 29, it is said that this is the practice followed by bankers in England with respect to checks.

<sup>67</sup> Sec. 20.

<sup>68</sup> Sec. 20 reads: "Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized." By necessary implication, the agent is liable on the instrument if he was not duly authorized. In most jurisdictions in this country before the Negotiable Instruments Law was enacted, such agent was not liable on the instrument, but only for breach of warranty of authority. See Bunker, sec. 22, n.; Daniel, sec. 306. Mr. Crawford's first draft of the Negotiable Instruments Law embodied the old rule, but the commissioners changed it deliberately in favor of the German rule. Crawford, sec. 39, n.; McKeehan, 41 Am. Law. Reg. (N. S.) 462-465.

alleged principal would have had no capacity to bind himself, or if the statute of limitations would have barred an action against him. The Bills of Exchange Act re-enacts the common law.<sup>69</sup> The agent signing in a representative capacity without authority is liable not on the bill or note, but only in an action for breach of warranty of authority, or in an action for deceit. Most of the continental countries also limit the holder's rights under these circumstances to an action for damages.<sup>70</sup>

## II. CONSIDERATION.

There are no rules relating to the subject of consideration in the Uniform Law. The notions of "holder for value" or "holder in due course" are equally unknown to the Uniform Law. The explanation is to be found in the fact that the law of bills of exchange had a continental origin and was developed upon the basis of the Roman law; it was incorporated into the English common law, and was thus compelled to adjust itself to the common-law doctrine of consideration.<sup>71</sup> An application of all rules governing the question of consideration in the law of contracts would have defeated the very purposes for which negotiable bills and notes had been created. It therefore became necessary to indulge in presumptions and fictions and to make exceptions to the ordinary rules and to those dealing with the burden of proof.<sup>72</sup> On the continent, where the law of bills and notes continued to develop as a separate legal institution upon its original basis, bills and notes became a circulating medium free from the personal relationship existing between the parties, without having to

<sup>69</sup> Sec. 26 (1).

<sup>70</sup> 1 Meyer, 68.

<sup>71</sup> Huffcut (p. 235) says:

"The doctrine that a bill or note requires *any* consideration is of comparatively recent origin. It was unknown in the time of *Blackstone* (2 Comm. 446), and early American cases are to be found in which it appears to be denied or doubted (*Bowers v. Hurd*, 10 Mass. 427; *Livingston v. Hastie*, 2 Cai. (N. Y.) 246). But the modern cases now uniformly hold that a bill or note executed and delivered as a gift is unenforceable for want of consideration."

<sup>72</sup> Attention may be called to the following: An antecedent debt constitutes value. N. I. L. sec. 25; B. E. A. sec. 27 (1) (b). An accommodation party is liable to a holder for value. N. I. L. sec. 29; B. E. A. sec. 28. Every negotiable instrument is deemed *prima facie* to have been issued for valuable consideration N. I. L. sec. 24; and every person whose signature appears thereon to have become a party thereto for value. N. I. L. sec. 24; B. E. A. sec. 30 (1). Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such prior to that time. N. I. L. sec. 26; B. E. A. sec. 27 (2). Absence or failure of consideration is not a defence against any person who is a holder in due course (N. I. L. sec. 28); who may not have given any consideration himself. N. I. L. sec. 58; B. E. A. sec. 29 (3).



encounter such difficulties as were created in England by the doctrine of consideration. While liability upon a bill or note in Anglo-American law rests today fundamentally upon the same footing as ordinary contracts, there is often a basic distinction between the two classes in continental countries. The theory has become prevalent in Germany that a unilateral promise to pay a certain sum may in itself constitute a contract deriving its validity not from the transaction giving rise thereto, but exclusively from its form.<sup>73</sup> The rights of the holder, whether he be an immediate or a remote party, result in a clear and logical manner from this conception. It would seem that this point of view also underlies the Uniform Law. It should be observed, however, that whatever may be the disagreement in the fundamental notions underlying the continental and Anglo-American systems of bills and notes in regard to the matter under discussion, both systems attain substantially the same result.<sup>74</sup> The main difference lies in the method by which the result is reached. Under the continental system it is done in a direct and simple manner; under the Anglo-American system, in a roundabout way by means of fictions and exceptions to the ordinary rules governing the subject of consideration.

### III. COVER.

In certain continental countries belonging to the French group, the connection of a bill of exchange with the underlying business transaction is seen in the rules relating to cover.<sup>75</sup> According to the law of these countries, the drawer or his agent must provide cover, which exists when at maturity the drawee owes to the drawer, or to the party for whose account the bill of exchange is drawn, an amount equal to the sum stipulated in the instrument. In case the drawer has not complied with his obligation, he will be liable even though the instrument was not duly presented and protested. If he has furnished cover, he is not liable upon the dishonor of the bill. The acceptance of a bill of exchange raises the presumption that the drawee has received cover. Where a bill is drawn for accommodation, the want of cover has no effect upon the legal existence of the instrument. A

<sup>73</sup> The theory was first propounded with great force by Otto Bähr, *Die Anerkennung als Verpflichtungsgrund* (Cassel, 1855).

<sup>74</sup> This is not true, of course, in all cases. A note executed by A and delivered by him to C as a gift would probably be enforceable under the Uniform Law; but according to English and American law it would not be enforceable for want of consideration.

<sup>75</sup> 1 Meyer, 149-161.

holder in bad faith, however, cannot recover on an accommodation bill.

Under French law the drawing and indorsement of a bill operates as an assignment of the funds in the hands of the drawee. Every holder has an action against a drawee who has received cover, and in the event of the bankruptcy of the drawer, the holder will be entitled to the funds in the drawee's hands.<sup>76</sup>

The rules just stated are plainly opposed to the German system, where the bill of exchange stands on its own merits, independent of the relations that may exist between the drawer and the drawee. They are also contrary to the law of England and to that of the United States.<sup>77</sup> At the Hague Conference the French delegates insisted that the interested parties in France were satisfied with the French system and asked that it be not sacrificed in the interest of the unification of the law.<sup>78</sup> No agreement could be reached with regard to this matter. The Convention expressly provides that all questions relating to cover shall be outside the scope of the Uniform Law and Convention.<sup>79</sup>

#### IV. NEGOTIATION.

##### 1. *In General.*

The laws of the continental countries on the subject of indorsements differ widely from each other and from the Anglo-American law. In some, a formal system prevails. France, for example, allows only special indorsements and requires that they be made to order, dated, and recite the value received.<sup>80</sup> An indorsement in blank does not pass title to the instrument, but operates only as a power of attorney to collect the amount of the bill.<sup>81</sup> The Uniform Law, on the other hand, agrees in most respects with the provisions of the Anglo-

<sup>76</sup> Arts. 115-117, French Commercial Code; Williamson, 26-48; 4 Lyon-Caen & Renault, 159-175; Thaller, 714-729.

<sup>77</sup> N. I. L. sec. 127; B. E. A. sec. 53 (1). The Bills of Exchange Act makes an exception in favor of Scotland. It provides:

"In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favor of the holder, from the time the bill is presented to the drawee." B. E. A. sec. 53 (2).

<sup>78</sup> *Proceedings*, 1910, 92; *Actes*, 1910, 40.

<sup>79</sup> Art. 14 of the Convention. The same impossibility of reaching an agreement upon this point had been disclosed at the Congress of Antwerp in 1885 and at the Congress of Brussels in 1888.

<sup>80</sup> Art. 137, French Commercial Code.

<sup>81</sup> Art. 138, French Commercial Code. Since the law of June 14, 1865, an indorsement in blank has been recognized in France as regards checks. 4 Lyon-Caen & Renault, 142.

American law.<sup>82</sup> A conditional indorsement, however, is not allowed, the condition being regarded as void.<sup>83</sup> Nor is an indorsement to bearer permitted.<sup>84</sup> As has been seen, an indorsement in blank does not convert an order instrument into one payable to bearer. When the blank indorsement is not filled out and is followed by a special indorsement, the last indorsee is presumed to have acquired the bill under an indorsement in blank.<sup>85</sup>

## 2. *Indorsement by way of Pledge.*

The Uniform Law contains a form of indorsement which is permitted in France and some other countries, but is unknown to German and to Anglo-American law,—an indorsement by way of pledge.<sup>86</sup> Such an indorsement protects the indorser against a dishonest indorsee to whom he has pledged the instrument. If he indorsed the bill or note specially to such a pledgee, or in blank, as he would otherwise be required to do, he might be unable to prove that the indorsement had been really by way of pledge. At the conference there was disagreement at first as to whether this form of indorsement should be dealt with by the Uniform Law, but it was later decided that it was preferable to admit it, and to determine its form and effect<sup>87</sup> while reserving to the national laws the privilege not to recognize it.<sup>88</sup> According to the Uniform Law, an indorsement by way of pledge confers upon the holder all the rights, privileges and powers arising from the bill of exchange; but an indorsement by him shall be valid only as an indorsement in the capacity of an agent.<sup>89</sup> The parties liable cannot set up against the holder defences based on their personal relations with the

<sup>82</sup> See arts. 10-12.

<sup>83</sup> Art. 11, par. 1. Sec. 39 of the N. I. L. provides:

“Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.”

See also B. E. A. sec. 33.

<sup>84</sup> Art. 11, par. 3.

<sup>85</sup> Art. 15, par. 1.

<sup>86</sup> An intention to indorse by way of pledge may be indicated by the stipulation, “value as security,” “value as pledge,” or any other words implying a pledge. Art. 18, par. 1.

<sup>87</sup> See *Proceedings*, 1910, 244; *Actes*, 1910, 83.

<sup>88</sup> This point is reserved by art. 4 of the Convention, according to which each contracting state may prescribe that, in an indorsement made within its own territory, any statement implying a pledge shall be deemed void. The indorsement, therefore, is to be regarded as an unconditional one.

<sup>89</sup> Art. 18, par. 1.



indorser, unless the indorsement has been given in pursuance of a fraudulent understanding.<sup>90</sup>

### 3. *Indorsement after Maturity.*

An indorsement after maturity has a most diversified effect in the different countries. In some (*e.g.*, in Holland)<sup>91</sup> such an indorsement is forbidden, so that a bill or note can be *assigned* only after maturity. In others,—France, for example,—the indorsee after maturity obtains the same rights as an indorsee before maturity, an indorser after maturity being regarded as the drawer of a bill of exchange payable at sight.<sup>92</sup> Likewise in England and in the United States, an indorsement after maturity is equivalent to the drawing of a sight draft.<sup>93</sup> Under such an indorsement no greater rights can be acquired than those possessed by the holder at the time of maturity.<sup>94</sup> Still other countries apply one rule to indorsements before, and another rule to indorsements after, the expiration of the time for protesting.<sup>95</sup> The Uniform Law<sup>96</sup> agrees with Anglo-American law, except that it applies these rules only to indorsements made after protest for non-payment, or after the expiration of the time fixed for drawing it. As the last holder may receive the instrument only in the afternoon before—or even on the day of—maturity, it seemed proper to allow him to negotiate the bill of exchange, with all the effects incidental to an indorsement prior to maturity, so long as the protest had not been drawn and the time for protest had not expired.<sup>97</sup>

### V. GUARANTY OF BILLS AND NOTES (*Aval*).

A guaranty of bills and notes by an *aval* form of guaranty is not uncommon in foreign countries, but was unknown to the common law of England. Accordingly, the English cases held that where a party signed a bill of exchange as backer to an acceptor, the drawer to whose order the bill of exchange was drawn could not recover.<sup>98</sup> Section 56

<sup>90</sup> Art. 18, par. 2.

<sup>91</sup> Art. 139, Commercial Code.

<sup>92</sup> 4 Lyon-Caen & Renault, 121-123.

<sup>93</sup> N. I. L. sec. 7, last par.; B. E. A. sec. 10 (2).

<sup>94</sup> See Daniel, sec. 724 *a*.

<sup>95</sup> Art. 16, German Bills of Exchange Law; 1 Meyer, 201-205.

<sup>96</sup> Art. 19.

<sup>97</sup> *Proceedings*, 1910, 244-245; *Actes*, 1910, 83.

<sup>98</sup> *Jackson v. Hudson* (1810) 2 Campb. 447; *Steele v. M'Kinlay* (1880) 5 App. Cas. 754, 772.

Lord Blackburn points out the difference between the English and the continental law in the following quotation from *Steele v. M'Kinlay*:

“It appears from *Pothier, Du Contrat de Change*, Part I., chap. 4, Article VII., *De l'obligation qui naît des avals* (Works of *Pothier*, by *Dupin*, vol. iii, p. 174),

of the English Bills of Exchange Act now provides: "Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course." It has been held, however, that this section has not changed the common-law rule.<sup>99</sup>

In the Uniform Negotiable Instruments Act there are more specific provisions on the subject in section 64, which reads:

"Where a person, not otherwise a party to an instrument places thereon his signature in blank before delivery, he is liable as indorser, in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties. (2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer. (3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee."

Notwithstanding these express provisions, it has been decided that a person indorsing a bill in blank before delivery for the purpose of backing the acceptor might be liable to the drawer-payee who had indorsed and transferred the instrument and who had been compelled to take it up. Sections 63 and 64 of the Uniform Negotiable Instruments Act were regarded as having established merely a presumption, parol evidence being admissible to show an intention that the indorser should be liable to the drawer.<sup>100</sup>

Before the Uniform Law, the laws recognizing *avals* differed a great deal in regard both to the form in which an *aval* must be given, and to the relation existing between the principal debtor and the party

that the *aval* might be made by one who gave his name, either by way of incurring responsibility for the drawer, placing the signature under the name of the drawer, or for the indorser, placing it under the indorsement, or for the acceptor, placing it under that of the acceptance. An *aval* for the honour of the acceptor, even if on the bill, is not effectual in English law, as appears by *Jackson v. Hudson* (2 Camp. at p. 448). That case cannot now be questioned after the lapse of so many years, even if it could have been successfully impugned at the time, which I do not think it could. But the indorsement by a stranger to the bill on it to one who is about to take it is efficacious in English law, and has the same effect as an *aval*. The effect, according to English law, of such an indorsement is recognised by Lord Holt, in *Hill v. Lewis* (1 Salk. at p. 133), and again in *Penny v. Innes* (1 C. M. & R. 439); such an indorsement creates no obligation to those who previously were parties to the bill; it is solely for the benefit of those who take subsequently. It is not a collateral engagement, but one on the bill."

<sup>99</sup> *Jenkins & Sons v. Coomber* [1898] 2 Q. B. 168; *Shaw v. Holland* (C. A.) [1913] 2 K. B. 15. Cf. *Glenie v. Smith* (C. A.) [1908] 1 K. B. 263; *Robinson v. Mann* (1901) 31 Can. Sup. Ct. 484; *McDonough v. Cook* (Ont. Ct. App. 1909) 45 Can. L. J. N. S. 327.

<sup>100</sup> *Haddock, Blanchard & Co. v. Haddock* (1908) 192 N. Y. 499. See also *Mercantile Bank of Memphis v. Busby* (1908) 120 Tenn. 652, 113 S. W. 390. For a criticism of these cases see Brannan, 78-80.

giving the guaranty.<sup>101</sup> The Uniform Law provides<sup>102</sup> that it may be given by a third party or even by a signer of the bill, and that it may be given upon the bill of exchange or upon an *allonge*.<sup>103</sup> It shall be expressed by the words *bon pour aval* ("good for guaranty") or by equivalent words, signed by the giver of the guaranty. Except in the case of the signature of the drawee or of the drawer, it is deemed to be created by the mere signature of the giver of the guaranty, on the face of the bill of exchange.<sup>104</sup> The guaranty must indicate in whose behalf it is given. In default of such indication, it is deemed to be given for the drawer.<sup>105</sup> The giver of a guaranty is liable in the same manner as the party for whom the guaranty is given.<sup>106</sup> His engagement is valid even when the liability for which he has given a guaranty was invalid for any cause other than a defect of form.<sup>107</sup> Upon payment of the bill of exchange, he has a right of recourse against the party whose signature he has guaranteed, and against the parties liable to the latter.<sup>108</sup>

#### VI. PRESENTMENT FOR ACCEPTANCE—ACCEPTANCE.

According to the Uniform Law, a bill may be presented for acceptance before the day of maturity, but not on the day of maturity or thereafter.<sup>109</sup> Presentment must be made at the residence of the drawee even in the case of a bill of exchange payable in another place (domiciled bill).<sup>110</sup> The drawer and indorser may stipulate that a bill must be presented for acceptance with or without fixing a time limit. The indorser cannot so stipulate, however, when the drawer has forbidden presentment for acceptance.<sup>111</sup> The drawer may forbid

<sup>101</sup> 1 Meyer, 446-460.

<sup>102</sup> Art. 29, par. 2.

<sup>103</sup> Art. 30, par. 1. According to art. 5 of the Convention each contracting state has the power to prescribe that a guaranty may be given within its own territory by a separate document indicating the place where it was executed. This mode of giving an *aval*, which is sanctioned by art. 142 of the French Commercial Code, is used to avoid injury to the credit of the party in whose behalf the guaranty is given.

<sup>104</sup> Art. 30, par. 3.

<sup>105</sup> Art. 30, par. 4.

<sup>106</sup> Art. 31, par. 1.

<sup>107</sup> Art. 31, par. 2.

<sup>108</sup> Art. 31, par. 3.

<sup>109</sup> Art. 20. In N. I. L. sec. 138 and B. E. A. sec. 18 (2) it is expressly provided that a bill may be accepted when overdue.

<sup>110</sup> Art. 20.

<sup>111</sup> Art. 21, par. 4. This is based upon the consideration that inasmuch as the prohibition by the drawer is operative with respect to all holders of the instrument, an indorser should not be allowed to change the character of the instrument.



such presentment except in the case of a domiciled bill, or a bill payable at sight, or a certain time after sight.<sup>112</sup> He may also stipulate that presentment for acceptance shall not take place before a certain date.<sup>113</sup> In the absence of an express stipulation, presentment for acceptance is required only in the case of bills of exchange payable after sight.<sup>114</sup>

Greatly varying rules existed in regard to the time within which instruments payable after sight must be presented for acceptance. The Anglo-American group of countries prescribed a reasonable time;<sup>115</sup> the other countries had definite periods which differed considerably among themselves.<sup>116</sup> France, for example, required presentment within a period of three, four, six, or twelve months, according to certain geographical zones fixed by law.<sup>117</sup> Germany, on the other hand, prescribed the uniform time of two years.<sup>118</sup> The delegates at the Hague Conference did not approve the Anglo-American rule because of its indefiniteness, and at the first conference fixed the period at six months, with the privilege of the drawer to extend the time another six months.<sup>119</sup> Upon the representation of the English delegates, who informed the members of the conference that bills drawn upon England frequently circulated longer than twelve months before being presented for acceptance, the limitation was dropped. The Uniform Law provides that bills of exchange payable after sight must be presented for acceptance within six months after the date of issue, but that the drawer may extend such period or shorten it. The indorser may shorten the period, but he may not extend it.<sup>120</sup>

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<sup>112</sup> Art. 21, par. 2. France and Austria favored this provision because, in their opinion, it is an excellent means for the discounting of outstanding debts. It seems that in France debtors are willing to have creditors draw upon them a bill payable on the day when the debt is due, but are opposed to binding themselves by an acceptance. In these cases it is customary to draw a bill prohibiting presentment for acceptance, and to have the bill discounted. *Proceedings, 1910, 245; Actes, 1910, 83-84.*

<sup>113</sup> Art. 21, par. 3.

<sup>114</sup> Art. 22, par. 2. According to N. I. L. sec. 143 (3) and B. E. A. sec. 39 (2), a bill must also be presented for acceptance when it is drawn payable elsewhere than at the residence or place of business of the drawee.

<sup>115</sup> Sec. 144 of N. I. L. provides that bills required to be presented for acceptance must be presented for acceptance or be negotiated within a reasonable time. The B. E. A. sec. 40 (1) has the same provision, but limits its application to bills payable after sight.

<sup>116</sup> 1 Meyer, 239-250.

<sup>117</sup> Art. 160, French Commercial Code.

<sup>118</sup> Art. 19, German Bills of Exchange Law.

<sup>119</sup> *Advance Draft*, art. 23; *Proceedings, 1910, 44; Actes, 1910, 373.*

<sup>120</sup> Art. 22, pars. 2, 3.

Anglo-American law gives the drawee twenty-four hours in which to decide whether or not he will accept the bill.<sup>121</sup> In other countries, Germany,<sup>122</sup> for example, the drawee is allowed no time for deliberation. In still others he must decide the question the day upon which presentment is made.<sup>123</sup> The Uniform Law provides that the drawee may ask that a second presentment be made to him on the day following the first;<sup>124</sup> but the holder is not bound to leave the bill with the drawee.<sup>125</sup> The question as to the consequences of a failure or a refusal on the part of the drawee to return the bill within the time allowed for deliberation cannot, therefore, ordinarily arise. The effect of a failure to return the bill within the time specified by law varies in different countries. In some, such failure makes the drawee liable for the damage caused to the holder.<sup>126</sup> In others, he is held liable as an acceptor.<sup>127</sup> In England and the United States the acceptance is deemed refused.<sup>128</sup> Under the Uniform Negotiable Instruments Act,<sup>129</sup> where the drawee refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

The only form of acceptance recognized by the Uniform Law is an acceptance upon the face of the bill itself.<sup>130</sup> The mere signature of

<sup>121</sup> N. I. L. sec. 136. The B. E. A. sec. 42 speaks of "customary" time, but this is assumed to be twenty-four hours.

<sup>122</sup> Art. 18, German Bills of Exchange Law; 1 Meyer, 255.

<sup>123</sup> 1 Meyer, 255.

<sup>124</sup> Art. 23, par. 2. In order to remove all danger that, in case of recourse for non-acceptance, the defendant might falsely claim that the holder had not granted to the drawee time for deliberation, the interested parties are allowed to set up that the right has not been granted only if the fact is set forth in the protest. Art. 23, par. 2.

<sup>125</sup> Art. 23, par. 1. The contrary appears to be true in the United States and England if the drawee should require the instrument to be delivered up. See Chalmers, 141.

<sup>126</sup> *E.g.*, France, art. 125, French Commercial Code.

<sup>127</sup> 1 Meyer, 256.

<sup>128</sup> B. E. A. sec. 42; N. I. L. sec. 150.

<sup>129</sup> Sec. 137.

<sup>130</sup> Art. 24, par. 1. This requirement is imposed so that the acceptance may not be confused with an indorsement. In England and in the United States the acceptance need not be upon the face of the bill. B. E. A. sec. 17 (2) (a). Under the N. I. L. it need not appear even upon the bill. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor, except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. Sec. 134. Even an unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who upon the faith thereof receives the bill for value. N. I. L. sec. 135.



the drawee will suffice.<sup>131</sup> When the bill is payable at a certain time after sight, or when it must be presented for acceptance within a time fixed by virtue of a special stipulation, the acceptance must be dated as of the time when it was actually given, unless the holder requires that it be dated as of the day of the first presentment.<sup>132</sup> In default of the date, the holder, in order to preserve his right of recourse against the indorsers and the drawer, must set forth this omission by a protest drawn within the stipulated time.<sup>133</sup> According to the American law<sup>134</sup> and English practice, a bill is accepted as of the day when it is presented for acceptance. When the acceptance is not dated, and the acceptor is not within reach, the holder may fill in the date. At the Hague Conference the giving of such a right to the holder was deemed too dangerous.<sup>135</sup>

As in Anglo-American law, the acceptance must be absolute and unqualified. Partial acceptance is admitted, however, in derogation to this rule, and contrary to the law of England and of the United States,<sup>136</sup> for the benefit of the drawer and of the indorser.<sup>137</sup> Any other modification of the terms of the bill is equivalent to a refusal to accept. The acceptor is bound, however, according to the tenor of the acceptance.<sup>138</sup> The Uniform Law does not contain an express regulation as to the effect of taking a qualified acceptance with respect to the drawer and indorsers. Under the Uniform Negotiable Instruments Act<sup>139</sup> and the Bills of Exchange Act<sup>140</sup> the drawer and the indorsers are discharged from liability on the bill, unless they have

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<sup>131</sup> Art. 24, par. 1.

<sup>132</sup> Otherwise the convenience of the drawee would cause the holder to lose one day's interest.

<sup>133</sup> Art. 24, par. 2.

<sup>134</sup> N. I. L. sec. 136.

<sup>135</sup> *Memorandum on Uniform Law on Bills of Exchange* by Sir M. D. Chalmers and Mr. F. H. Jackson; *Proceedings*, 1912, 401.

<sup>136</sup> N. I. L. sec. 141 (2); B. E. A. sec. 19 (2) (b).

<sup>137</sup> Art. 25, par. 1. The holder can protest only for the balance, and in case of failure on the part of the drawee to pay at the time of maturity, the holder will be put to the trouble and expense of instituting two separate proceedings against the drawer and indorsers. In order to enable the holder to bring these suits, art. 50 provides that in case of recourse in consequence of a partial acceptance, the party who pays the sum for which the bill has not been accepted may require that this payment be stated on the bill and that he be given a receipt therefor. The holder shall also furnish such party with a certified copy of the bill and the protest.

<sup>138</sup> Art. 25, par. 2. Whether an acceptor who has modified his acceptance shall be held according to the law of exchange or according to the civil law, is left to the courts. *Proceedings*, 1910, 224-225; *Actes*, 1910, 350.

<sup>139</sup> Sec. 142.

<sup>140</sup> Sec. 44.



expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assented thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. Under the Uniform Law, if a bill is payable at the residence of the drawee, he may indicate in the acceptance a different address in the same place where payment is to be made.<sup>141</sup> According to Anglo-American law, an acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.<sup>142</sup> An acceptance to pay in a different city constitutes a qualified acceptance.<sup>143</sup>

Under the Uniform Law the drawer may sue the acceptor upon the bill and recover from him the amount to which any other party exercising recourse for non-payment is entitled.<sup>144</sup> This will give him, contrary to Anglo-American law,<sup>145</sup> a right to a commission which, in the absence of agreement, is one-sixth of one per cent of the principal sum.

## VII. MATURITY.

The rules laid down in the Uniform Law regarding the calculation of maturity, days of grace, and the effect of holidays are in substantial accord with those of the Uniform Negotiable Instruments Act.<sup>146</sup> Article 17 of the Convention leaves the contracting states free to provide that certain business days shall be assimilated to legal holidays. Specific rules are laid down for the calculation of the maturity of bills of exchange, drawn in one country upon another, when the calendars differ.<sup>147</sup> Bills of exchange payable at sight must be pre-

<sup>141</sup> Art. 26, par. 2.

<sup>142</sup> N. I. L. secs. 140, 141 (3); B. E. A. sec. 19 (2) (c).

<sup>143</sup> *Niagara District Bank v. Fairman etc. Mfg. Co.* (1860, N. Y.) 31 Barb. 403; Daniel, sec. 1381; Norton, 123-124.

<sup>144</sup> Art. 27, par. 2.

<sup>145</sup> See *infra*, "Amount of Recovery."

<sup>146</sup> The B. E. A. sec. 14 (1) still allows days of grace. As regards holidays, the English law distinguishes between common-law and bank holidays. When the last day of grace falls on a common-law holiday, the maturity is the next preceding business day. If it falls on a bank holiday, it is due and payable on the succeeding business day.

<sup>147</sup> Art. 36. The provisions of the Uniform Law are as follows:

"When a bill of exchange is payable on a fixed date in a place where the calendar differs from that of the place of issue, the date of maturity shall be deemed to be fixed according to the calendar of the place of payment.

"When a bill of exchange drawn between two places having different calendars is payable at a certain time after date, the date of issue shall be referred to the corresponding day of the calendar of the place of payment, and the maturity shall be fixed accordingly.

sented for payment within the time fixed by law or contract for the presentment for acceptance of bills payable at a certain time after sight.<sup>148</sup> The maturity of a bill of exchange payable at a certain time after sight shall be determined either by the date of the acceptance or by that of the protest. In the absence of protest, an acceptance which is not dated shall be deemed with regard to the acceptor to have been given on the last day allowed for presentment by law or contract.<sup>149</sup>

#### VIII. RECOURSE FOR NON-ACCEPTANCE AND NON-PAYMENT.

##### 1. *In General.*

The continental law does not allow an immediate right of recourse for non-acceptance. A refusal to accept merely entitles the holder to security from the drawer and the indorser to insure the payment of the bill on the day of maturity.<sup>150</sup> In practice this right amounts to very little. The Uniform Law adopts the Anglo-American rule, which allows immediate recourse.<sup>151</sup> It goes beyond the Anglo-American law<sup>152</sup> in providing that such right shall exist also in case of the bank-

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"The time for presentment of bills of exchange is calculated in accordance with the rules of the preceding paragraph.

"These rules are not applicable if a stipulation in the bill of exchange, or even the mere terms of the instrument, indicate an intention to adopt different rules."

Chalmers states that these rules are in accord with English mercantile practice. *Proceedings*, 1912, 402.

<sup>148</sup> Art. 33. See "Presentment for Acceptance," *ante*.

The B. E. A. provides: "Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable." Sec. 45 (2).

"Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged." Sec. 86 (1).

According to N. I. L. sec. 71 presentment for payment will be sufficient, in the case of a bill of exchange, if it is made within a reasonable time after the last negotiation thereof.

<sup>149</sup> Art. 34, par. 2.

<sup>150</sup> Art. 120, French Commercial Code; art. 25, German Bills of Exchange Law; 1 Meyer, 464-471.

<sup>151</sup> Art. 42, par. 2. Where a drawer has stipulated that the instrument must be presented for acceptance within a certain period, a failure to present the instrument within the time stipulated will cause the holder to lose his right of recourse against the drawer and indorsers for non-payment as well as for non-acceptance, unless it results from the terms of the stipulation that the drawer intended to relieve himself only from the guaranty of acceptance. Art. 52, par. 2. If the stipulation for a limit of time for presentment is contained in an indorsement, the indorser alone is able to avail himself of it. Art. 52, par. 3. *Proceedings*, 1912, 293; *Actes*, 1912, I, 96.

<sup>152</sup> According to Anglo-American law, where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors,



ruptcy of the drawee, whether an acceptor or not, of suspension of payments, of ineffective execution against his goods,<sup>153</sup> and in case of the bankruptcy of the drawer<sup>154</sup> of a bill not subject to acceptance.<sup>155</sup> The Uniform Law, however, does not allow the holder of a bill to treat the bill as dishonored by non-acceptance without presentment for acceptance or protest, as he may in the United States when the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill.<sup>156</sup>

Wide differences exist in the law respecting the conditions precedent to the right of recourse upon non-acceptance and non-payment, and concerning the effect of an act of God and other circumstances rendering compliance with such conditions impossible or unnecessary.

## 2. *Presentment for Payment and Protest.*

In England and in the United States only bills appearing on their face to be foreign require protest for non-acceptance or non-payment.<sup>157</sup> On the continent<sup>158</sup> and under the Uniform Law,<sup>159</sup> a protest is required whenever a bill or note is dishonored by non-acceptance or non-payment, except when protest is waived.<sup>160</sup> The laws also differ widely in regard to the time of presentment. According to Anglo-American law presentment must be made on the day the instrument falls due, except so far as this is modified by the rules relating to Sundays and holidays.<sup>161</sup> Failure to make presentment on that day is excused, however, if it cannot be made with the exercise of reasonable diligence. Where presentment is not made as required by law,

before the bill matures, the holder has only the right to have the bill protested for better security against the drawer and indorsers. N. I. L. sec. 158; B. E. A. sec. 51 (5). This was also the continental rule. 1 Meyer, 471-480.

<sup>153</sup> The holder is entitled to exercise recourse only after presentment of the bill to the drawee for payment and after protest. Art. 43, par. 5.

<sup>154</sup> The production of a judgment setting forth the bankruptcy of the drawer is sufficient to enable the holder to exercise recourse. Art. 43, par. 6.

<sup>155</sup> Art. 42, par. 2.

<sup>156</sup> N. I. L. sec. 148 (1). In England he may do so "where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill." B. E. A. sec. 41 (2) (a).

<sup>157</sup> N. I. L. secs. 118, 152; B. E. A. secs. 51 (2), 89 (4).

<sup>158</sup> 1 Meyer, 310.

<sup>159</sup> Art. 43, par. 1. Upon the request of Italy and Belgium, art. 9 of the Convention was adopted, according to which each contracting state may prescribe that, with the assent of the holder, protests to be drawn within its territory may be replaced by a declaration dated and written upon the bill itself, signed by the drawee, and transcribed in a public register within the time fixed for protests.

<sup>160</sup> By a stipulation "return without costs," "without protest," and the like. Art. 45, par. 1.

<sup>161</sup> N. I. L. secs. 71, 85; B. E. A. secs. 45 (1), 14 (1).



the drawer and indorsers are discharged.<sup>162</sup> In other countries,—France, for example,—when presentment is not made on the day of maturity, but takes place within the time allowed for the drawing of the protest, the drawer or indorsers will not be discharged, provided the drawer has not meanwhile become insolvent.<sup>163</sup> Another group of countries, including Germany, authorizes presentment within the limits allowed for protesting, and imposes upon the holder no penalty for a failure to present the instrument to the drawee on the day of maturity.<sup>164</sup> The Uniform Law follows the group last mentioned, and requires that the holder present the instrument for payment either on the day when it is payable or on one of the two succeeding business days.<sup>165</sup> It allows, as it were, two days of grace to the holder while it denies all grace to the payer. Each contracting state is allowed to prescribe that, as regards bills payable within its territory, presentment shall be made on the day of their maturity. Failure to observe this rule shall give rise only to a claim for damages.<sup>166</sup>

The Uniform Law requires protest for non-payment to be made either on the day when the bill or note is payable, or on one of the two succeeding business days.<sup>167</sup> In Anglo-American law, whenever protest is required, it must be made on the day of dishonor.<sup>168</sup> It suffices, however, that the bill be noted on that day. When duly noted, the protest may be subsequently extended as of the date of noting.<sup>169</sup> The system of noting is unknown to the continental countries<sup>170</sup> and to the Uniform Law.

<sup>162</sup> N. I. L. sec. 70; B. E. A. sec. 45, par. 1.

<sup>163</sup> Williamson, 143-144; 4 Lyon-Caen & Renault, 298-299.

<sup>164</sup> 1 Meyer, 277.

<sup>165</sup> Art. 37, par. 1.

<sup>166</sup> Art. 7, Convention.

<sup>167</sup> Art. 43, par. 2. Protest for non-acceptance must be made within the time fixed for presentment for acceptance. Art. 43, par. 3. Where the drawee asks that a second presentment be made to him on the day following the first, and the first presentment is made on the last day allowed for presentment, the protest may be drawn up on the next day. Art. 43, par. 3.

<sup>168</sup> "This rule often gives rise to great inconvenience in country places, where it is difficult to obtain the services of a notary. It would be well to alter the rule if a preliminary difficulty can be got over. The noting or protest is generally taken as showing that the bill was duly presented on the proper day, but if the protest be not initiated until the next day, there is nothing to show that the bill was duly presented the day before. Moreover, notice of dishonor must, as a general rule, be sent off on the day after dishonor. Any change in our law requires careful consideration." *Memorandum on Uniform Law of Bills of Exchange* by Sir M. D. Chalmers and Mr. F. H. Jackson, British delegates, *Proceedings, 1912*, 404.

<sup>169</sup> N. I. L. sec. 155; B. E. A. sec. 51 (4).

<sup>170</sup> 1 Meyer, 351-352.

Waiver of protest, according to Anglo-American law, is deemed to be a waiver of presentment and notice of dishonor, as well as of formal protest.<sup>171</sup> Under the continental law<sup>172</sup> and the Uniform Law,<sup>173</sup> it does not release the holders from presentment nor from giving notice. In some countries,—Germany,<sup>174</sup> for example,—and under the Uniform Law,<sup>175</sup> a waiver of protest, however, shifts the burden of proof as to due presentment upon the person who claims that due presentment was not made. In Germany, if the holder protests the bill or note notwithstanding a waiver, he can recover the protest fees.<sup>176</sup> In France<sup>177</sup> and England,<sup>178</sup> such a stipulation is held to be a prohibition against protesting; there the fees are not recoverable. The same appears to be true in the United States,<sup>179</sup> although there is some dissenting opinion.<sup>180</sup> In some countries a waiver of protest binds only the person who makes it.<sup>181</sup> In others, a distinction is made between the drawer and the indorsers. A stipulation by the drawer in the body of the instrument binds all indorsers.<sup>182</sup> A stipulation by an indorser will, in some countries, bind such indorser only,<sup>183</sup> in other countries it binds him and subsequent indorsers as well.<sup>184</sup> The Uniform Law provides that where the stipulation is inserted by the drawer it is effective as to all signers.<sup>185</sup> Nothing is said about the effect of a stipulation by an indorser; by implication it will bind the indorser only. If, in spite of a waiver of protest by the drawer, the holder protests the bill or note, the costs are at his expense. When the stipulation is inserted by an indorser, the costs of protest, when such has been drawn, may be recovered from all the parties.<sup>186</sup>

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<sup>171</sup> N. I. L. sec. 111; Daniel, sec. 1095 a.

<sup>172</sup> 1 Meyer, 312; Lyon-Caen & Renault, 328-329.

<sup>173</sup> Art. 45, par. 2.

<sup>174</sup> Art. 42, German Bills of Exchange Law.

<sup>175</sup> Art. 45, par. 2.

<sup>176</sup> Art. 42, Bills of Exchange Law.

<sup>177</sup> 4 Lyon-Caen & Renault, 328; Thaller, 773.

<sup>178</sup> B. E. A. sec. 57 (1) (c).

<sup>179</sup> *Johnson v. Bank of Fulton* (1859) 29 Ga. 259; *Legg v. Vinal* (1896) 165 Mass. 555.

<sup>180</sup> *Merritt & Myers v. Benton* (1833, N. Y.) 10 Wend. 116. See also Daniel, sec. 933.

<sup>181</sup> *E.g.*, Germany: Staub, art. 42, n. 3; 2 Grünhut, 403.

<sup>182</sup> 1 Meyer, 314; N. I. L. sec. 111.

<sup>183</sup> N. I. L. sec. 110.

<sup>184</sup> 1 Meyer, 314; 4 Lyon-Caen & Renault, 330-331; Thaller, 773.

<sup>185</sup> Art. 45, par. 3.

<sup>186</sup> *Ibid.*

### 3. Notice.

Radical differences exist in the laws of the various countries relating to the requirement of notice. In the Anglo-American system, notice of dishonor is the important thing after due presentment, and failure to give due notice discharges the drawer and indorsers from liability on the bill or note.<sup>187</sup> Protest is required only in the case of foreign bills, and, according to Chalmers, "is looked upon rather as an interesting antiquarian form which must be complied with to please our foreign friends."<sup>188</sup> In continental countries protest is the all-important thing. A loose system of notice generally prevails and failure to give notice does not discharge the drawer and indorser from liability on the instrument, but entitles them merely to damages against the holder for any loss suffered on account of the neglect.<sup>189</sup> Great differences exist in the details regarding the time and manner of giving notice.<sup>190</sup> In France the requirement of notice must be followed by a citation into court. In order to exercise his right of recourse against a drawer and indorser, the holder must notify them of the protest, and, in default of payment, summon them to appear before a commercial court within two weeks<sup>191</sup> after the date of protest.<sup>192</sup> The Uniform Law stands substantially upon the footing of the general continental law. It provides as follows:<sup>193</sup>

"The holder must give notice of non-acceptance or non-payment to his indorser and to the drawer within the four business days which follow the day of the protest, or, in case of a stipulation, 'return without costs,' the day of presentment."<sup>194</sup>

<sup>187</sup> N. I. L. sec. 89; B. E. A. sec. 48.

<sup>188</sup> *Proceedings*, 1912, 418.

<sup>189</sup> 1 Meyer, 368-369; art. 45, German Bills of Exchange Law.

<sup>190</sup> 1 Meyer, 367-377.

<sup>191</sup> Art. 165-167, French Commercial Code, amended by law of Dec. 22, 1906; 4 Lyon-Caen & Renault, 320-324; Thaller, 776-779; Williamson, 156-161.

Two weeks is the minimum. Where the bill is drawn in France and is payable beyond the continent of Europe, the time may vary from one month to eight months. This period will be doubled in times of maritime war. If the holder sues the indorser and drawer collectively, he enjoys with reference to each of them the period stated. Each indorser may exercise recourse within the same period, the time beginning to run from the day following the date of summons. Arts. 165-167.

<sup>192</sup> The above is not regarded as an ordinary statute of limitations but as a time provision. Although the prescribed steps have been taken within the required time, the cause of action will be subject to the five years' statute of limitations. 4 Lyon-Caen & Renault, 358, n.; 1 Meyer, 530.

<sup>193</sup> Art. 44.

<sup>194</sup> Four days are allowed to meet the necessities of some banks in countries like France, where a large number of bills mature at the end of a month or quarter of the year. See *Proceedings*, 1912, 290; *Actes*, 1912, I, 93.



"Each indorser must within two days notify his indorser of the notice which he has received, indicating the names and addresses of those who have given the preceding notices, and thus in succession back to the drawer. The limit of time above indicated shall run from the receipt of the preceding notice.

"In the case of an indorser who has not indicated his address, or has indicated it in an illegible manner, it suffices if notice is given to the preceding indorser.

"A party who must give notice may do so in any form whatever, even by the simple return of the bill of exchange. He must prove that he has done so within the prescribed time.

"This time limit shall be deemed to have been observed if an ordinary letter containing the notice has been mailed within the said time.

"A party not giving notice within the time above indicated shall not lose his right of recourse; he shall be responsible for the loss, if any, caused by his negligence, but the damages shall not exceed the amount of the bill of exchange."

#### 4. *Act of God, etc.*

The question whether the duties necessary to be performed as conditions precedent to the right of recourse are absolute duties, or duties of reasonable diligence, has been answered in different ways. In Anglo-American law only reasonable diligence is required, so that any delay is excused when caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence,<sup>195</sup> and the act in question is dispensed with if, after the exercise of reasonable diligence, it cannot be made.<sup>196</sup> At the opposite pole stands the law of Germany, which regards them as absolute duties and accepts no excuses.<sup>197</sup> The French law is similar to the Anglo-American, although it appears to be stricter in the recognition of excuses.<sup>198</sup> The subject gave rise to vigorous discussion at the confer-

<sup>195</sup> N. I. L. secs. 81, 113, 147, 159; B. E. A. secs. 46 (1), 50 (1), 39 (4), 51 (9). Where the cause of delay ceases to operate, presentment, protest, and notice must be made with reasonable diligence: N. I. L. sec. 159.

<sup>196</sup> N. I. L. secs. 81, 82 (1), 112, 113, 147, 148 (2), 159; B. E. A. secs. 39 (4), 46 (1), (2) (a), 50 (1), 50 (2) (a), 41 (2) (b), 51 (9).

<sup>197</sup> Staub, art. 41, n. 3; 2 Grünhut, 397.

<sup>198</sup> 4 Lyon-Caen & Renault, 312-313. According to Dr. Meyer the French law recognizes as excuses insuperable obstacles of a general character only, not personal excuses. Vol. 1, p. 93. This statement is not borne out, however, clearly either by the French writers or the French courts. See Alauzet, *Commentaire du code de commerce*, 3d ed., n. 1453-1454; 2 Bédarride, *De la lettre de change*, n. 488-490; 3 Bravard-Veyrierès, *Traité de droit commercial*, 2d ed. by Demangeat, 418; Boistel, *Cours de droit commercial*, 4th ed., n. 816; 2 Nouguiér, *Des lettres de change*, 4th ed., n. 1107-1108; Pardessus, 1 *Cours de droit commercial*, n. 426; *Contrat de change*, n. 366; Thaller, 774. Concerning the French decisions consult, *Pandectes françaises*.—*Effets de commerce*, n. 2463 *et seq.*; Ruben de Couder,

ences of the Hague.<sup>199</sup> The Uniform Law adopts a middle course and provides that when presentment or protest is prevented by an insuperable obstacle (*vis major*), the time for performance is extended. After the cessation of the *vis major* the holder must present the bill or note and, if necessary, protest the same without delay. If the *vis major* continues for more than thirty days from maturity, recourse may be exercised without presentment or protest.<sup>200</sup> The holder is bound to give prompt notice of the *vis major* to his indorser and to set forth this notice, dated and signed by him, on the bill of exchange, or on an *allonge*.<sup>201</sup> The requirement that the *vis major* must have continued for thirty days before recourse is allowed seemed a fair compromise after a consideration of the holder's interests and of the interests of the parties liable upon the instrument. It was hoped, moreover, that in most cases an amicable settlement might be reached during this time. What constitutes *vis major* is a question of fact. The Uniform Law expressly provides, however, that matters purely personal to the holder or to the person intrusted with presentment of the bill, or with the drawing of a protest, shall not be deemed to constitute cases of *vis major*.<sup>202</sup> Such matters as railway accidents, delays in the mail, or interruptions of traffic, which affect a number of people, may, therefore, be regarded as cases of *vis major*. Different holdings upon this subject must be expected.<sup>203</sup>

##### 5. Other Excuses Dispensing with Presentment, Notice or Protest.

Anglo-American law excuses the holder from fulfilling the ordinary conditions required to fix the liability of the drawer and indorsers

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Dictionnaire, Protêt, n. 62 *et seq.* The commercial court of Nantes has held in conformity with Anglo-American law that where the protest was delayed owing to the death of the nearest official authorized to make the protest such delay was excusable. Decision of Feb. 27, 1869, *Revue de jurisprudence commerciale et maritime de Nantes*, 1869, 1, 251.

<sup>199</sup> *Proceedings*, 1910, 212-219, 256-257; *Actes*, 1910, 92-94, 339-345; *Proceedings*, 1912, 293; *Actes*, 1912, I, 96-98.

<sup>200</sup> For bills of exchange at sight or a certain time after sight, the period of thirty days runs from the date on which the holder, even before the expiration of the time for presentment, has given notice of the *vis major* to his indorser. Art. 53, par. 5.

<sup>201</sup> Art. 53, par. 2. In other respects the rules governing notice apply.

<sup>202</sup> Art. 53, par. 6. Inasmuch as the holder has under the Uniform Law two days of grace, so to speak, within which to present the instrument after maturity, these provisions will not operate as harshly as they would if presentment on the day of maturity were required.

<sup>203</sup> The recognition of foreign judgments as to what constitutes *vis major* will



in other cases than those where the acts cannot be done in the exercise of reasonable diligence. The only excuse expressly recognized by the Uniform Law is that of an insuperable obstacle. Under the Uniform Law it would seem, therefore, that presentment and protest for non-acceptance will be necessary where the drawee is dead or has no capacity to contract by bill,<sup>204</sup> and that presentment and protest for non-payment will be required in order to charge the drawer where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument.<sup>205</sup> Presentment and protest will likewise be required in order to charge the indorser where the instrument was made or accepted for his accommodation and he had no reason to expect that it would be paid if presented.<sup>206</sup> Even where presentment is impossible, as where the drawee is a fictitious person, a formal protest may be necessary.<sup>207</sup>

#### 6. Remedies where Recourse is Lost.

Where the holder has failed to comply with the conditions prescribed by law in order to charge the drawer or the indorser, and has thus lost his right of recourse, he may not be deprived of all rights under the general law of a particular country. Countries belonging to the French group, for example, allow him to sue the drawer who has not provided cover.<sup>208</sup> In countries belonging to the German group, he has a quasi-contractual remedy against the drawer or indorser who would otherwise be unjustly enriched. He will have a right of action on the consideration, save so far as the drawer or indorser may have suffered loss as a result of the holder's failure to present the instrument or to protest it within the required time.<sup>209</sup> The Uniform Law lays down no rule in this matter, but allows the contracting states to follow either the French or the German practice.<sup>210</sup> Anglo-American law, it would seem, generally denies recovery even of the original consideration.<sup>211</sup>

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be subject to the ordinary rules of private international law relating to the recognition of foreign judgments.

<sup>204</sup> *Contra*: N. I. L. sec. 148 (1); B. E. A. sec. 41 (2) (a).

<sup>205</sup> *Contra*: N. I. L. sec. 79; B. E. A. sec. 46 (2) (c).

<sup>206</sup> *Contra*: N. I. L. sec. 80; B. E. A. sec. 46 (2) (d).

<sup>207</sup> *Contra*: N. I. L. sec. 82 (2); B. E. A. sec. 46 (2) (b).

<sup>208</sup> Thaller, 716.

<sup>209</sup> Art. 83, German Bills of Exchange Law; 1 Meyer, 161-164.

<sup>210</sup> Art. 13, Convention.

<sup>211</sup> Woodward, *Quasi-Contracts*, sec. 92; *Continental Nat. Bank v. Metropolitan Nat. Bank* (1903) 107 Ill. App. 455; *Allan v. Eldred* (1880) 50 Wis. 132.



## IX. RIGHTS AND LIABILITIES OF PARTIES.

1. *Drawing Without Recourse.*

In Anglo-American law a drawer may draw without recourse;<sup>212</sup> under the Uniform Law such a stipulation is deemed not written.<sup>213</sup>

2. *Forged Indorsements.*

The position of the Uniform Law with regard to forged indorsements may be gathered from the following articles:

"The possessor of a bill of exchange is deemed to be its lawful holder, if he can prove his title by an uninterrupted series of indorsements, even though the last indorsement is in blank. When an indorsement in blank is followed by another indorsement, the signer of the latter shall be presumed to have acquired the bill under the blank indorsement. Indorsements which have been cancelled shall be deemed null.

"If a party has been dispossessed of a bill of exchange in any manner whatever, the holder proving his title in the manner indicated in the preceding paragraph shall not be bound to surrender the bill, unless he has acquired it in bad faith or in acquiring it has been guilty of gross negligence.<sup>214</sup>

"The drawee who pays before maturity does so at his own risk and peril.

"A party paying at maturity shall be validly discharged, unless he has been guilty of fraud or gross negligence. He is bound to verify the regularity of the series of indorsements, but not the signatures of the indorsers."<sup>215</sup>

In Anglo-American law title to the bill or note payable to order can be acquired only through a correct chain of genuine indorsements. A forged indorsement will prevent the passing of title.<sup>216</sup> According to the continental view the negotiability of the instrument confers title upon every holder who has taken it when the chain of indorsements is only formally correct. The mere fact that one or more of the indorsements are forgeries is immaterial,<sup>217</sup> but the holder will,

<sup>212</sup> N. I. L. sec. 61; B. E. A. sec. 16 (1).

<sup>213</sup> Art. 9. In the *Memorandum on Uniform Law on Bills of Exchange* submitted by the British delegates, Sir M. D. Chalmers and Mr. F. H. Jackson, reprinted in *Proceedings, 1912*, 396 *et seq.*, the following comment appears on p. 399:

"Such bills are very uncommon, though, as we pointed out, they might be justifiable where a man was drawing for the account of a third party, or where the drawer was acting in a representative capacity, *e.g.*, as an executor. The continental delegates adhered to their rule on the ground, that where a drawer drew a bill without recourse there was nobody liable on the bill at all at the time of its issue, and if it were refused acceptance there might never be anybody liable on it."

<sup>214</sup> Art. 15.

<sup>215</sup> Art. 39, pars. 2, 3.

<sup>216</sup> N. I. L. sec. 23; B. E. A. sec. 24.

<sup>217</sup> 1 Meyer, 48, 268-274. The harshness of the rule as regards the holder is

speaking generally, acquire an indefeasible title only when he is not guilty of fraud or gross negligence in the taking of the instrument.<sup>218</sup> This view has become that of the Uniform Law.<sup>219</sup> Where a holder has acquired title to a bill of exchange in a continental country under a forged indorsement, his title and that of every subsequent holder will be recognized in England under its rules relating to the conflict of laws.<sup>220</sup>

It is equally well settled in English and American law that when an instrument is payable to order, a drawee, in order to be discharged, must pay the person who holds the legal title or his agent. He must examine the genuineness of the indorsements at his peril.<sup>221</sup> No exception to this rule exists in this country. In England,<sup>222</sup> the law relieves bankers upon whom checks or other demand drafts payable to order are drawn, from the responsibility of verifying the indorsements where the instrument is paid in good faith and in the ordinary course of business. On the continent, the payer need not inquire into the genuineness of the indorsement, and, in some countries at least, he would make such examination at his peril.<sup>223</sup> With regard to inquiring into the identity of the party demanding payment, the duty of the payer is limited to the exercise of due care.<sup>224</sup> The French law makes a distinction. Payment before the maturity of the instrument is made at the peril of the person so paying, and it imposes upon him the duty of examining the genuineness of the indorsements and the identity of the party presenting the instrument. Payment on the day of maturity exonerates him from these duties in the absence of fraud

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mitigated somewhat in certain countries by a special procedure (amortization) which may be instituted when a bill or note is lost, for the purpose of declaring it null and void. See 1 Meyer, 569 *et seq.*; Staub, art. 73; secs. 824-850, German Code Civil Procedure. This procedure is of no avail, of course, where the loss is not discovered before the bill is paid. The rights of the holder in case of loss are not dealt with in the Uniform Law, the matter being left to the law of the contracting states. See art. 15, Convention.

<sup>218</sup> The term "good faith" in the law of bills and notes has generally the same signification as it has in Anglo-American law. To charge a person with bad faith there must exist actual knowledge of the infirmity or defect or knowledge of such facts as to put him on notice. See N. I. L. sec. 56 and B. E. A. sec. 90. In Germany the term is equivalent to "a conviction, not resting upon gross negligence that through its acquisition no rights of third parties were affected detrimentally." 1 Meyer, 44.

<sup>219</sup> Art. 15, par. 2.

<sup>220</sup> *Embiricos v. Anglo-Austrian Bank* (C. A.) [1905] 1 K. B. 677.

<sup>221</sup> N. I. L. secs. 119 (1), 88, 191 ("holder"); B. E. A. sec. 59 (1).

<sup>222</sup> B. E. A. sec. 60.

<sup>223</sup> 1 Meyer, 269-274.

<sup>224</sup> *Ibid.*

or gross negligence.<sup>225</sup> It has been attempted to justify this distinction on the ground that the payer, who must pay the instrument promptly on the day of maturity, cannot take the time to inquire into the genuineness of the indorsements or into the identity of the holder. The Uniform Law<sup>226</sup> adopts the distinction of the French law concerning the payer's duty to examine the validity of the indorsements, but leaves it to the courts to decide his obligation as regards the holder's identity and capacity.<sup>227</sup>

At the conference the British delegates opposed the adoption of the continental rule relating to forged indorsements on the ground that it would encourage laxity in transactions involving bills and notes, although the English bankers were inclined to favor the rule.<sup>228</sup> The question is, of course, whether it is better policy to protect the owner of a negotiable instrument whose signature has been forged or the party who in good faith acquired the same. On the whole, it would seem fairer that the risk concerning the genuineness of the indorsements be thrown upon the party who has taken the instrument from a stranger. The distinction drawn in England between bankers and other drawees, seems arbitrary.

### 3. *Warranties and Admissions.*

The Uniform Law contains no provisions similar to those found in the Uniform Negotiable Instruments Act<sup>229</sup> relating to the admissions of the acceptor and to the warranties of a person negotiating a bill or note by means of a qualified or unqualified indorsement. The liability of the qualified indorser is regarded a matter of civil law and hence is not dealt with in the Uniform Law. The object of the Uniform Negotiable Instruments Act<sup>230</sup> is attained in a measure by the simple provision that the forgery of a signature, even that of the drawer or acceptor, shall not in any way affect the validity of the other signatures.<sup>231</sup>

### 4. *Defences.*

In the Advance Draft of 1910 an attempt was made to enumerate the defences which could be set up against the holder. At the second conference this enumeration was deemed incomplete and it was felt that it was practically impossible to make out a complete list. It was

<sup>225</sup> 4 Lyon-Caen & Renault, 252-259; Thaller, 757; Williamson, 121-125.

<sup>226</sup> Art. 39, par. 3.

<sup>227</sup> *Proceedings*, 1910, 252; *Actes*, 1910, 89.

<sup>228</sup> *Proceedings*, 1912, 385.

<sup>229</sup> Secs. 62, 65, 66. See also B. E. A. secs. 54 (2) (3), 58 (3), 55 (2) (b).

<sup>230</sup> Secs. 62 (1), 65 (1).

<sup>231</sup> Art. 68.



decided, therefore, to indicate merely the defences which cannot be set up against the holder, and to leave the question in other respects to the courts. According to article 16 of the Uniform Law parties sued on a bill cannot set up against the holder defences based upon their personal relations with the drawer or with prior holders, unless the transfer has taken place in pursuance of a fraudulent understanding. The question of alterations, however, is dealt with specifically in the Uniform Law. There is but one article devoted to the subject, which reads as follows:

"In case of alteration of the text of a bill of exchange, parties who have signed subsequent to the alteration are bound according to the tenor of the altered text; parties who have signed prior to the alteration are bound according to the tenor of the original text."<sup>232</sup>

This article is couched in such general language as to leave doubt as to its meaning in important particulars. The Negotiable Instruments Law<sup>233</sup> and the Bills of Exchange Act<sup>234</sup> are more specific.<sup>235</sup>

### 5. *Amount of Recovery.*

In regard to the amount of recovery, the Uniform Law has the following provisions:<sup>236</sup>

Art. 47. "The holder may claim from the party against whom he exercises recourse:

"1. The amount of the bill of exchange, not accepted or not paid, with the interest, if any has been stipulated for.

"2. Interest at the rate of five per cent from the date of maturity.

"3. The costs of the protest, those of the notices given by the holder to the preceding indorser and to the drawer, as well as other expenses.

"4. A commission, which, in the absence of agreement, shall be one-sixth of one per cent of the principal of the bill of exchange, and shall not in any case exceed this rate.

"If recourse is had before maturity, the amount of the bill shall be subject to a deduction for discount. This discount shall be calculated, at the option of the holder, either according to the official rate of discount (bank rate), or according to the market rate on the date of the recourse at the place of the holder's domicile."

<sup>232</sup> Art. 69.

<sup>233</sup> N. I. L. sec. 124.

<sup>234</sup> B. E. A. sec. 64.

<sup>235</sup> Sec. 124, N. I. L. reads:

"Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against the party who has himself made, authorized or assented to the alteration and subsequent indorsers.

"But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor."

<sup>236</sup> These rules apply also to promissory notes. See art. 79.

Art. 48. "A party who has taken up a bill of exchange may claim from the parties liable to him:

"1. The entire sum which he has paid.

"2. Interest on said sum, calculated at the rate of five per cent. from the day of such payment.

"3. The expenses which he has incurred.

"4. A commission on the principal of the bill of exchange, fixed in conformity with article 47, subdivision 4."

The Uniform Law provides further:

Art. 51. "Any party having the right to exercise recourse may, in the absence of a stipulation to the contrary, recover the amount by means of a new bill (redraft), undomiciled and drawn at sight on one of the parties liable to him.

"The redraft shall include, in addition to the sums indicated in articles 47 and 48, the brokerage paid and the stamp tax upon the redraft.

"If the redraft is drawn by the holder, the amount shall be fixed according to the prevailing rate for bills of exchange at sight, drawn in the place where the original bill was payable on the place of domicile of the party liable. If the redraft is drawn by an indorser, the amount shall be fixed according to the prevailing rate for bills of exchange at sight drawn in the place where the drawer of the redraft is domiciled on the place of domicile of the party liable."

The Bills of Exchange Act<sup>237</sup> awards the same damages to the holder, to the drawer, and to the indorser and allows them to recover:

"(a.) The amount of the bill.

"(b.) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case.

"(c.) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest."

The above rules do not cover the entire field. A foreign drawer, for example, who has paid re-exchange may recover it from an English acceptor.<sup>238</sup>

The rate of interest allowed in England appears to be usually five per cent.<sup>239</sup> No commission is allowed.<sup>240</sup> Where suit is brought before maturity, the full amount may be recovered, contrary to the Uniform Law, without deduction for a discount.

<sup>237</sup> B. E. A. sec. 57 (1). The rules under sec. 57 (1) apply also to notes. B. E. A. sec. 89.

<sup>238</sup> Chalmers, 195; *In re Gillespie, Ex parte Roberts* (1885) 16 Q. B. D. 702; (1886, C. A.) 18 Q. B. D. 286.

<sup>239</sup> Chalmers, 195.

<sup>240</sup> A commission is allowed under the continental and the Uniform Law by way of compensation for the damage which the holder may have suffered as a consequence of the non-fulfillment of the obligations assumed towards him; *Proceedings*, 1910, 172; *Actes*, 1910, 299.

With regard to the question of a "redraft," the Bills of Exchange Act lays down the rule:

"In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer, or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment."<sup>241</sup>

Chalmers makes the following comment upon this subdivision:

"The re-exchange is ascertained by proof of the sum for which a sight bill (drawn at the time and place of dishonour at the *then rate of exchange* on the place where the drawer or indorser sought to be charged resides) must be drawn in order to realize at the place of dishonour the amount of the dishonoured bill and the expenses consequent on its dishonour. The expenses consequent on dishonour are the expenses of protest, postage, customary commission and brokerage, and, when a re-draft is drawn, the cost of the stamp.

"The holder may recoup himself by drawing a sight bill for such sum on either the drawer or one of the indorsers. Such bill is called a 're-draft.' The indorser who pays a re-draft may in like manner draw upon the antecedent party."<sup>242</sup>

In the United States there is a great lack of uniformity with respect to the subject of damages. The Negotiable Instruments Law does not undertake to regulate the matter. In lieu of re-exchange the statutes frequently establish fixed amounts of damages.<sup>243</sup>

#### 6. *Partial Payments.*

The question whether partial payment should be allowed was debated a good deal at the Hague conferences. In England and in the United States, the holder has the option of accepting partial payment or not.<sup>244</sup> The Uniform Law obliges him to accept such payment in the interest of the drawer and indorsers, who are discharged to that extent.<sup>245</sup> Upon the express demand of the French Government the Convention<sup>246</sup> permits each contracting state to authorize the holder to refuse partial payment of instruments payable within its own territory.

#### 7. *Payment into Court.*

In default of presentment of a bill or note within the time specified

<sup>241</sup> Sec. 57 (2).

<sup>242</sup> Chalmers, 196.

<sup>243</sup> See Daniel, secs. 1438-1460.

<sup>244</sup> Wood's Byles, \*234.

<sup>245</sup> Art. 38, par. 2. The drawee may require that such payment shall be specified on the bill and that a receipt therefor be given to him. Art. 38, par. 3.

<sup>246</sup> Art. 8, Convention.



by law, the Uniform Law<sup>247</sup> authorizes the debtor to pay the amount due into court, a right which he does not enjoy under Anglo-American law.

### 8. *Statute of Limitations.*

Contrary to the Uniform Negotiable Instruments Act and to the Bills of Exchange Act, the Uniform Law lays down rules concerning the running of the statute of limitations. Against the acceptor, all actions arising out of a bill of exchange are barred after three years calculated from the date of maturity. Actions by the holder against the indorsers and against the drawer are barred after one year from the date of the protest drawn up within the stipulated time, or from the date of maturity where there is a stipulation "return without costs." Actions of recourse by indorsers against each other, and against the drawer, are barred after six months, counting from the day when the indorser took up the bill, or from the day that he himself was sued.<sup>248</sup>

Much time was spent at the conference in the discussion of what facts should be regarded as sufficient to interrupt the running of the statute of limitations, but no agreement was reached, and the matter was left to the legislation of the contracting states.<sup>249</sup>

## X. ACCEPTANCE AND PAYMENT FOR HONOR. REFEREE IN CASE OF NEED.

### 1. *In General.*

The Uniform Law deals with the referee in case of need and with the subject of acceptance and payment for honor under the title "Intervention for Honor." It lays down a few general rules and then deals separately with "acceptance for honor" and "payment for honor." The general provisions differ from Anglo-American law in allowing "a third party, even the drawee, or a party already liable on the bill, except only the acceptor," to intervene.<sup>250</sup> The Uniform Negotiable Instruments Act and the Bills of Exchange Act restrict acceptance for honor to "any person not being a party already liable thereon,"<sup>251</sup> though they permit *any* person to pay for honor.<sup>252</sup> The

<sup>247</sup> Art. 41.

<sup>248</sup> Art. 70. Each contracting state is at liberty to decide whether, where the statute of limitations has run, an action shall not lie against the drawer who has not provided cover, or against a drawer or indorser who is unjustly enriched. The same right exists when the acceptor has received cover or has been unjustly enriched. Art. 13, Convention.

<sup>249</sup> Art. 16, Convention.

<sup>250</sup> Art. 54, par. 3.

<sup>251</sup> N. I. L. sec. 161; B. E. A. sec. 65 (1).

<sup>252</sup> N. I. L. sec. 171; B. E. A. sec. 68 (1).

Uniform Law prescribes for both forms of intervention that the party intervening is bound to give notice without delay of his intervention to the party for whom he has intervened.<sup>253</sup> Failure to do so may result in liability for damages. There is no such requirement in Anglo-American law.

## 2. *Acceptance for Honor.*

The Uniform Law differs from the Uniform Negotiable Instruments Act but agrees with the Bills of Exchange Act in not providing for a further acceptance by a different party,<sup>254</sup> and in requiring acceptance for honor to be written on the bill.<sup>255</sup> The Uniform Negotiable Instruments Act and the Bills of Exchange Act prescribe that where a bill has been accepted for honor or contains a referee in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or to the referee in case of need.<sup>256</sup> The Uniform Law contains no such requirement concerning the referee in case of need. Regarding the acceptor for honor, it adopts the rule that he shall be held in the same manner as the person for whose honor he intervenes.<sup>257</sup> Presentment for payment and protest would be necessary, therefore, if he intervened on behalf of the drawer or an indorser.

According to the Uniform Negotiable Instruments Act and the Bills of Exchange Act, presentment to the acceptor for honor must be made at maturity, and when he refuses to pay, the instrument must be protested.<sup>258</sup> Under the Uniform Law the holder must present the bill to the acceptor for honor "at the place of payment," and in case of non-payment, he must protest the bill.<sup>259</sup> Such presentment is not necessary if the domicile of the acceptor for honor is not at the place fixed for payment according to the terms of the bill of exchange itself.<sup>260</sup> Presentment for payment to the referee in case of need is required under the same conditions;<sup>261</sup> whereas under Anglo-American law no presentment to the referee need be made.<sup>262</sup> In default of protest within the time specified by law, the party who has indicated

<sup>253</sup> Art. 54, par. 4.

<sup>254</sup> N. I. L. sec. 161; *cf.* B. E. A. sec. 65 (1).

<sup>255</sup> Uniform Law, art. 56; B. E. A. sec. 65 (3). The N. I. L. sec. 162 is satisfied if the acceptance for honor is in writing.

<sup>256</sup> N. I. L. sec. 167; B. E. A. sec. 67 (1).

<sup>257</sup> Art. 57, par. 1.

<sup>258</sup> N. I. L. sec. 170; B. E. A. sec. 67 (4).

<sup>259</sup> Art. 59, par. 1.

<sup>260</sup> *Proceedings*, 1912, 296; *Actes*, 1912, I, 99.

<sup>261</sup> Art. 59, par. 1.

<sup>262</sup> N. I. L. sec. 131; B. E. A. sec. 15.

the case of need or for whose honor the bill has been accepted and the subsequent indorsers, are discharged from liability.<sup>263</sup> The Uniform Law allows the party for whose honor an acceptance is given and the parties liable to him to take up the instrument at once under discount and to proceed against the parties liable to them.<sup>264</sup> No such right exists under Anglo-American law.

### 3. *Payment for Honor.*

Anglo-American law allows a bill which has been protested for non-payment to be paid for honor without fixing a time within which such intervention may take place.<sup>265</sup> Under the Uniform Law payment for honor cannot be made later than the day following the last day allowed for the drawing of the protest for non-payment.<sup>266</sup> It provides also that it must be for the entire sum which the party in whose behalf it is made would have to pay, excepting the commission, and that it must be established by a receipt given on the bill, showing for whose honor payment was made.<sup>267</sup> In default of such indication, the payment shall be deemed to have been made on behalf of the drawer.<sup>268</sup> According to the Uniform Negotiable Instruments Act and the Bills of Exchange Act, payment for honor must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.<sup>269</sup>

The Uniform Law contains a specific provision that the party paying for honor cannot indorse the bill of exchange anew.<sup>270</sup> Both systems of law give the preference in case of competition of payment for honor to the one whose payment will discharge most parties to the bill.<sup>271</sup> The Uniform Law adds that, if this rule is not observed, the party intervening who has knowledge of it shall lose his right of

<sup>263</sup> Art. 59, par. 2.

<sup>264</sup> Art. 57, par. 2.

<sup>265</sup> N. I. L. sec. 171; B. E. A. sec. 68 (1).

<sup>266</sup> Art. 58, par. 2. In the *Memorandum on the Uniform Law submitted by the British Delegates, Proceedings, 1912*, 406, it is stated:

"The foreign delegates said that the rule was required because the holder ought at once to send off the protest to the indorser he sought to hold liable. But take the case of a bill drawn in South America and dishonored in England. There may be no mail for a fortnight. Why should not the bill be paid for honor at any time within this fortnight? According to English law, any number of duplicate protests may be drawn up from the original noting, so that the foreign reason for the rule has no application here."

<sup>267</sup> Arts. 60, par. 1; 61, par. 1.

<sup>268</sup> Art. 61, par. 1. Wood's Byles, \*267.

<sup>269</sup> N. I. L. sec. 172; B. E. A. sec. 68 (3).

<sup>270</sup> Art. 62, par. 1.

<sup>271</sup> Uniform Law, art. 62, par. 3; N. I. L. sec. 174; B. E. A. sec. 68 (2).



recourse against those who would have been released.<sup>272</sup> Both the Anglo-American law and the Uniform Law oblige the holder to accept payment for honor, and in case of his refusal to do so, he forfeits his right of recourse against the parties who would have been discharged by such payment.<sup>273</sup>

#### XI. BILLS IN A SET.

The law governing bills in a set is very similar in the different countries. One or two differences, however, should be noted. According to the Uniform Law any holder of a bill which does not indicate that it has been drawn in a single specimen may require at his own expense the delivery of two or more specimens.<sup>274</sup> This duty was imposed upon the drawer for the benefit of an importer beyond the seas who is dependent upon the bills for his means of remittance.<sup>275</sup> In Anglo-American law this seems to be a matter of private arrangement.<sup>276</sup> Another difference is expressed in article 65 of the Uniform Law, which provides as follows:

"A party who has sent one of the parts for acceptance must indicate on the other parts the name of the party with whom such part may be found. The latter is bound to deliver it to the lawful holder of another part.

"If he refuses to do so, the holder can not exercise recourse until after he has established by a protest:

"1. That the part sent for acceptance has not been delivered to him on his demand.

"2. That acceptance or payment cannot be obtained on another part."

No such regulations exist in Anglo-American law. The question who shall be deemed the owner of the bill when two or more parts of a set have been negotiated to different persons in due course, as between such holders, is not answered in the Uniform Law. The Uniform Negotiable Instruments Act and the Bills of Exchange Act make the person whose title first accrued the true owner of the bill.<sup>277</sup>

#### XII. COPIES.

There are no general provisions in Anglo-American law relating to the subject of copies. The Uniform Law has the following:

Art. 66. "Every holder of a bill of exchange has the right to make copies thereof.

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<sup>272</sup> Art. 62, par. 3.

<sup>273</sup> Uniform Law, art. 60, par. 1; N. I. L. sec. 176; B. E. A. sec. 68 (7).

<sup>274</sup> Art. 63, par. 3.

<sup>275</sup> Conant's report, *Proceedings*, 1910, 20.

<sup>276</sup> See Chalmers, 238.

<sup>277</sup> N. I. L. sec. 179; B. E. A. sec. 71 (3).

"A copy must reproduce the original exactly, including indorsements and all other declarations which appear thereon. It must indicate where it ends as a copy.

"It may be indorsed and guaranteed by *aval* in the same manner and with the same effect as the original."

Art. 67. "The copy must designate the party possessing the original instrument. The latter is bound to surrender such instrument to the lawful holder of the copy.

"If he refuses to do so, the holder cannot exercise *récourse* against the parties who have indorsed the copy until after he has established by a protest that the original has not been surrendered to him on his demand."

### XIII. CONFLICT OF LAWS.

The Uniform Law devotes three articles to the conflict of laws. The rules were necessary because the entire subject of capacity, and certain matters relating to form and to the mode of performance, remain subject to the particular law of the contracting states.<sup>278</sup> The provisions are as follows:<sup>279</sup>

Art. 74. "The capacity of a person to bind himself by a bill of exchange is determined by his national law. If such national law declares the law of another state to be applicable, the latter law shall be applied.

"A person lacking capacity under the law indicated in the preceding paragraph is validly bound nevertheless if he entered into the obligation within the territory of a state according to whose law he would have had capacity."

Art. 75. "The form of any contract entered into with respect to bills of exchange is regulated by the laws of the state within whose territory such contract has been signed."

Art. 76. "The form and time limits of the protest, as well as the form of other acts necessary for the exercise or preservation of rights with respect to bills of exchange, are regulated by the laws of the state within whose territory the protest must be drawn up or the act in question must be done."

Each contracting state has the power, however, to refuse to recognize the validity of any engagement entered into in regard to a bill of exchange by a person within its jurisdiction, which would not be held valid within the territory of the other contracting states except by application of article 74, paragraph 2, of the Uniform Law.<sup>280</sup>

Moreover, the right is reserved to the contracting states not to apply

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<sup>278</sup> The sole object of the provisions was to lay down rules for those cases with respect to which no complete uniformity had been secured.

The English rules governing the conflict of laws are found in section 72 of B. E. A. The N. I. L. failed to codify the American law on the subject.

<sup>279</sup> These rules also apply to promissory notes. Art. 79.

<sup>280</sup> Art. 18, Convention.

the principles of private international law sanctioned by the Convention or the Uniform Law as regards:

1. An engagement entered into outside the territories of the contracting states.

2. A law which would be applicable to the case according to these principles but which is not that of one of the contracting states.<sup>281</sup>

The rules of the conflict of laws applicable to bills and notes will be considered in Part II.<sup>282</sup>

#### XIV. STAMP DUTIES.

In certain countries,<sup>283</sup> including England,<sup>284</sup> a bill or note may be void for want of compliance with stamp laws. This seemed unjust to the delegates at the Hague conferences. The Convention, therefore, specifically prohibits the contracting states from subordinating the validity of engagements taken in matters of bills and notes to a compliance with stamp laws: It authorizes them, however, to suspend the exercise of such rights until the prescribed stamp duties have been paid.<sup>285</sup>

#### XV. PROMISSORY NOTES.

The rules governing bills of exchange under the Uniform Law apply equally to promissory notes, so far as they are not inconsistent with the nature of such instruments.<sup>286</sup>

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<sup>281</sup> Art. 20, Convention.

<sup>282</sup> For a criticism of arts. 74-76 of the Uniform Law (Avant-Projet, arts. 83-85) and of arts. 18 and 20 of the Convention (Avant-Projet, arts. 15 and 17) see Buzzati, *Revue de droit international et de législation comparée* (1911) 496.

<sup>283</sup> 1 Meyer, 144-148.

<sup>284</sup> See Stamp Act, 1891, 54 & 55 Vict. ch. 39.

<sup>285</sup> Art. 19, Convention.

<sup>286</sup> Art. 79. Upon the request of Russia each contracting state was authorized not to introduce the Uniform Law so far as it relates to promissory notes. Art. 22, Convention.



## **PART II**

**THE RULES OF THE CONFLICT OF LAWS RELATING TO  
BILLS AND NOTES**



## CHAPTER I: CAPACITY

### I. IN GENERAL.

Neither the Uniform Negotiable Instruments Act, nor the Bills of Exchange Act, nor the Hague Convention has attempted to lay down a uniform internal rule governing capacity. In England and the United States the ordinary rules relating to capacity apply also to bills and notes.<sup>1</sup> On the continent there were formerly many special restrictions affecting the capacity of parties to obligate themselves by means of bills and notes, and in a few countries some of these restrictions still obtain.<sup>2</sup> The principal conflicts that may arise will relate to the capacity of married women and infants. What should be the rule in the conflict of laws governing their capacity to bind themselves by bill or note?

### II. ANGLO-AMERICAN LAW.

#### 1. *English Law.*

The Bills of Exchange Act<sup>3</sup> does not answer the question; therefore the general rule governing commercial contracts applies. What the English law on the subject is cannot be stated with certainty. There appears to be only a single case directly in point, that of *Male v. Roberts*.<sup>4</sup> An action was brought in England to recover a sum of money advanced in Scotland to an infant who appears to have been domiciled in England. Lord Eldon, at Nisi Prius, held that the defence of infancy depended upon the *lex loci contractus*, the law of Scotland.<sup>5</sup> At the time the decision was rendered, the English law, both with respect to ordinary commercial contracts and with respect to contracts of marriage, seemingly favored the view that the law of the place where a contract was entered into determined the capacity

<sup>1</sup> For a comparative statement of the municipal law relating to capacity, see Bettelheim, 11-19; 3 Dena, *Trattato*, 42-44; Ottolenghi, 43-44; 4 Weiss, 439-440.

<sup>2</sup> So, for example, officers in the active army in Austria. See Bettelheim, 60; Jettel, 117.

<sup>3</sup> Section 72 (2) lays down the rule that the "interpretation" of the drawing, indorsement, acceptance or acceptance *supra* protest of a bill is determined by the law of the place where such contract is made. But this term is not comprehensive enough to include "capacity." See Lafleur, 184.

<sup>4</sup> (1800) 3 Esp. 163.

<sup>5</sup> See also *Stephens v. McFarland* (1845) 8 Ir. Eq. 444.



of the parties.<sup>6</sup> A noticeable change in the English cases appears during the latter half of the nineteenth century, indicating a decided tendency to adopt the continental view, which regards the question of capacity as belonging to the personal law and as subject, therefore, to the *lex domicilii* or the *lex patriae*.<sup>7</sup> In the case of *Sottomayor v. De Barros*<sup>8</sup> the Court of Appeal, *per* Cotton, J., says: "As in other contracts, so in that of marriage, personal capacity must depend on the law of the domicile." And this rule is said to be "a well recognized principle." In *Cooper v. Cooper*<sup>9</sup> the Lord Chancellor, Lord Halsbury, makes the categorical statement that "The capacity to contract is regulated by the law of domicile." These statements were mere *dicta*, as both cases related to marriage. Foote<sup>10</sup> feels, nevertheless, that the *dictum* of the Court of Appeal in *Sottomayor v. De Barros* "has unsettled the whole subject, if, indeed, it has not gone further, and established the right of the *lex domicilii* to decide all questions of capacity for every purpose."

In *In re Cooke's Trusts*<sup>11</sup> the *lex domicilii* was actually applied to determine the capacity of an infant to make a marriage contract.

The recent cases of *Ogden v. Ogden*<sup>12</sup> and *Chetti v. Chetti*<sup>13</sup> seem to support the *lex loci contractus*, but these cases also involve capacity

<sup>6</sup> Lord Stowell expressed this view forcibly in *Dalrymple v. Dalrymple* (1811) 2 Hagg. Cons. 54, a case involving capacity for marriage, in the following words:

"It is an indispensable rule of law, as exercised in all civilized countries, that a man who contracts in a country, engages for a competent knowledge of the law of contracts in that country. If he rashly presumes to contract without such knowledge, he must take the inconveniences resulting from such ignorance upon himself, and not attempt to throw them upon the other party, who has engaged under a proper knowledge and sense of the obligation which the law would impose upon him by virtue of that engagement."

In another case—*Ruding v. Smith* (1821) 2 Hagg. Cons. 371—Lord Stowell expressly guarded himself as being understood as favoring the *lex domicilii*.

"I do not mean to say," he says, "that Huber is correct in laying down as universally true, that '*personales qualitates, alieni in certo loco jure impressas, ubique circumferri, et personam comitari*,' that a man, being of age in his own country, is of age in every other country, be the law of majority in that country what it may."

<sup>7</sup> In 1860, Sir Creswell still laid down the old rule regarding capacity for marriage, stating in general terms that the capacity to contract is subject to the *lex loci contractus*. *Simonin v. Mallac* (1860) 2 Swab. & Tr. 67, 29 L. J. P. & M. 97; 6 Jur. N. S. 561, 2 L. T. Rep. N. S. 327.

<sup>8</sup> (1877, C. A.) 3 P. D. 1, 5, 47 L. J. P. & M. 23, 37 L. T. Rep. N. S. 415, 26 Wkly. Rep. 455.

<sup>9</sup> (1888) 13 App. Cas. H. L. Sc. 88, 99, 59 L. T. Rep. N. S. 1.

<sup>10</sup> Foote, 338-339.

<sup>11</sup> (1887) 56 L. J. Ch. 637.

<sup>12</sup> [1908] P. 46, 77 L. J. P. & M. 34, 97 L. T. Rep. N. S. 827, 24 T. L. R. 94.

<sup>13</sup> [1909] P. 67, 78 L. J. P. & M. 23, 99 L. T. Rep. N. S. 885, 55 Sol. J. 163, 25 T. L. R. 146.

for marriage, and it is not clear that the statements were intended to apply to ordinary mercantile contracts.

The absence of recent decisions on the question of commercial capacity and the uncertain pronouncements on the subject by the English courts in connection with marriage contracts make it impossible to state what the English law actually is. Westlake<sup>14</sup> is of the opinion that the net result of the English decisions supports the view that the law of domicile governs the capacity to contract, except that in marriage contracts, the *lex loci celebrationis* must also be satisfied. Dicey<sup>15</sup> concludes, on the other hand, that the rule laid down by Lord Eldon in *Male v. Roberts* remains unaffected by the later English cases, and that the capacity to enter commercial contracts is probably to be determined by the law of the country where the contract was made.<sup>16</sup>

## 2. American Law.

The American law is in a somewhat less uncertain state than the English. As the commercial life of the nation grew, the *lex domicilii* was found inconvenient, and was discarded as inconsistent with our conditions, so far, at least, as married women were concerned. The prevailing rule thus became the *lex loci contractus*.<sup>17</sup> A remnant of the *lex domicilii* is found in those decisions which hold that the courts of the domicile of an infant<sup>18</sup> or a married woman<sup>19</sup> may decline to

<sup>14</sup> pp. 43-46, 61.

<sup>15</sup> Rule 149, exception 1, p. 538.

<sup>16</sup> Foote, 77, and Cheng, 70-72, agree with Dicey.

<sup>17</sup> *Nichols & Shepard Co. v. Marshall* (1899) 108 Iowa, 518, 79 N. W. 282; *Thompson v. Taylor* (1901) 66 N. J. L. 253, 49 Atl. 544, 54 L. R. A. 585, 88 Am. St. Rep. 485; *Bell v. Packard* (1879) 69 Me. 105, 31 Am. Rep. 251; *Milliken v. Pratt* (1877) 125 Mass. 374, 28 Am. Rep. 241.

Story, in 1834, advocated the *lex loci contractus* in his famous work on the *Conflict of laws*, and contributed largely to the adoption of the rule in this country. In sec. 102 of his treatise he says:

"Secondly: As to acts done, and rights acquired and contracts made in other countries (than the place of domicile), touching property therein the law of the country where the acts are done, the rights are acquired, or the contracts are made, will generally govern in respect to the capacity, state, and condition of persons."

<sup>18</sup> *International Text Book Co. v. Connelly* (1912) 206 N. Y. 188, 200, 99 N. E. 722. The court in this case, *per Vann, J.*, said:

"We think that the facts stated show that the contract wherever made was to be performed by both parties substantially in this state and that it should be governed by its laws. Our courts will not enforce the contract of an infant against him, even if technically it was completed by acceptance in another state, when his promise was not only made here but entire performance by one party and substantial performance by the other was to be made here. Otherwise it would be easy to deprive an infant of the protection which our law affords him on grounds of public policy."

<sup>19</sup> *First National Bank v. Shaw* (1902) 109 Tenn. 237, 70 S. W. 807, 59 L. R. A.



enforce their contracts entered into in a foreign state and valid under the law of such state, when their enforcement would contravene the established policy of the forum having for its object the protection of infants and married women.

The same rule applies where the contract is made by correspondence.<sup>20</sup> The law of the place of payment, or the law of the state with reference to which the parties may have intended to contract, is of no consequence.<sup>21</sup>

Whether these rules apply to infants' contracts cannot be stated definitely. *Thompson v. Ketcham*<sup>22</sup> appears to be the only case involving the question. This case was decided, however, upon its second appeal to the Supreme Court of New York, on a question of evidence. On the first appeal the plea of infancy was held to be controlled by the law of the place of performance, and it seems that Chancellor Kent, who wrote the opinion of the court on the second appeal, concurred in that view.<sup>23</sup>

The suggestion has been made that, inasmuch as infants' contracts are not void, but voidable only, the defence of infancy being in the

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498, 97 Am. St. Rep. 840; *Armstrong v. Best* (1893) 112 N. C. 59, 17 S. E. 14, 25 L. R. A. 188, 34 Am. St. Rep. 473.

<sup>20</sup> *Milliken v. Pratt* (1877) 125 Mass. 374, 28 Am. Rep. 241; *Thompson v. Taylor* (1901) 66 N. J. L. 253, 49 Atl. 544, 54 L. R. A. 585, 88 Am. St. Rep. 485.

<sup>21</sup> *Cockburn v. Kingsley* (1913) 25 Colo. App. 89, 135 Pac. 1112; *Burr v. Beckler* (1914) 264 Ill. 230, 106 N. E. 206; *Garrigue v. Kellar* (1905) 164 Ind. 676, 74 N. E. 523, 69 L. R. A. 870, 108 Am. St. Rep. 324; *Campbell v. Crampton* (1880) 18 Blatchf. 150; *Hager v. Nat. German American Bank* (1898) 105 Ga. 116, 31 S. E. 141; but see *Mayer v. Roche* (1909) 77 N. J. L. 681, 75 Atl. 235; *Basilea & Calandra v. Spagnuola* (1910) 80 N. J. L. 88, 77 Atl. 531.

<sup>22</sup> (1809) 4 Johns. 285; (1811) 8 Johns. 146.

In this case suit was brought in New York upon a note executed in Jamaica, the defence being infancy. The judge charged the jury that as the contract was made in Jamaica, it must be governed by the laws of that island, and as there was no proof that the laws of Jamaica protect infants against such contracts, the plaintiff was entitled to recover. The jury accordingly found a verdict for the plaintiff. The Supreme Court reversed the judgment on the ground that the testimony in the case showed the note to be payable in New York on the arrival of the parties there, so that the law of New York would govern.

"For, it is a well settled rule," said the learned court, "that where a contract is made in reference to another country in which it is to be executed, it must be governed by the laws of the place where it is to have its effect." 4 Johns. 285, 288.

When the case came again before the Supreme Court the parol testimony that the payment of the note was to be made in New York was held inadmissible. The defendant not having proved the law of Jamaica, judgment was rendered in favor of the plaintiff.

<sup>23</sup> "The *lex loci* is to govern, unless the parties had in view a different place, by the terms of the contract. *Si partes alium in contrahendo locum respuerint.*



nature of a privilege granted to the infant, these cases do not involve a question of capacity in any true sense, but the *obligation* of the contract, which, in accordance with the general weight of authority in this country, is controlled by the law of the place of performance.<sup>24</sup> There is no decision, however, which sanctions such a distinction. The question is actually regarded by the English and American courts as one relating to capacity.

Where the question concerns not so much the consequences of infancy as the fact of infancy itself, the *lex domicilii* enters as a third factor to complicate the problem. Assuming that the *lex loci contractus* governs the consequences of the plea of infancy, does the same law decide also whether or not a person is of age? Where a party has reached the age of majority under the local law, the defence that he is still a minor under the *lex domicilii* would probably be denied. It is more doubtful whether, in the converse case, that is, where the party is a major under the law of his domicile, but is still a minor under the law of the place of contracting, the defence of infancy could be set up. There are *dicta*, but no actual decisions, to the effect that the law of the place where the contract was entered into should control.<sup>25</sup>

### III. CONTINENTAL LAW.

#### 1. French Law.<sup>26</sup>

The capacity of French subjects is determined by French law irre-

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This is the language of Huber. Lord Mansfield, in *Robinson v. Bland* 2 Burr. 1077, says, the law of the place can never be the rule, where the transaction is entered into with an *express* view to the law of another country, and that was the case with the contract in that cause." Kent, Ch. J., 8 Johns. 146, 149.

<sup>24</sup> Parmele, in Wharton's *Conflict of laws*, 911; also in note 26 L. R. A. N. S. 769. But see Minor, 149, n.

<sup>25</sup> See *Andrews v. His Creditors* (1838) 11 La. 464; *Phoenix Mut. Life Ins. Co. v. Simons* (1893) 52 Mo. App. 357; *Huey's Appeal* (1854, Pa.) 1 Grant, 51. See also Wharton, 264-265.

A number of cases which rejected the *lex domicilii* as determining the status of a party as a major, involved the question of the party's capacity to sue: *Gilbreath v. Bunce* (1877) 65 Mo. 349; or to control a judgment: *Harris v. Berry* (1884) 82 Ky. 137; and not ordinary commercial capacity.

<sup>26</sup> Since the days of the statisticians the view has generally prevailed on the continent that the personal law, formerly the *lex domicilii*, today more commonly the law of nationality (*lex patriae*), should determine both the status and the contractual capacity of parties.

For a discussion of the views of the early jurists, see 2 Lainé, 116-198; Burge, 471-474; Story, 69-84.

In the event of a change of domicile, the more general opinion favored the law of the actual domicile at the time of contracting and not that of the domicile of origin. See 2 Lainé, 199-217. So also the modern authors. See Savigny, 355; Bar, 317-318.

spective of the place where the bill or note is executed or payable.<sup>27</sup> The personal (national) law is applied also to foreigners. A party cannot avail himself of his foreign personal law if he has fraudulently concealed the same or if its application would contravene the public policy of France.<sup>28</sup> The courts have also tended to disregard the foreign personal law in favor of the *lex loci contractus* when the interests of a Frenchman, who had exercised due care, would be prejudiced by its application.<sup>29</sup>

## 2. German Law.

The German law is found in article 84 of the German Bills of Exchange Law of 1849, which reads as follows:

"The capacity of a foreigner to incur liabilities under exchange law is to be decided according to the law of the state to which he belongs. Nevertheless, a foreigner, incapable of contracting by exchange law according to the law of his own country, is liable, with respect to obligations incurred within the Empire (inland), so far as he is so capable according to inland law."<sup>30</sup>

This rule has now become the general rule governing the conflict of laws, for article 7 of the Introductory Act to the Civil Code provides:

"The business capacity of a person (*Geschäftsfähigkeit*) is adjudged according to the laws of the state to which he belongs. . . .

"If a foreigner enters into a legal transaction in this country as to which he is not competent, or is restricted in his capacity, he is as to such transactions to be regarded as competent so far as he would be competent to act under the German laws. This provision does not apply to transactions relative to family rights and to rights of inheritance, nor to transactions disposing of real estate in a foreign country."<sup>31</sup>

<sup>27</sup> French Civil Code, art. 3.

<sup>28</sup> 4 Weiss, 442.

<sup>29</sup> Cass. (Jan. 16, 1861) D. 1861, 1, 193; App. Bordeaux (Apr. 11, 1906) 33 Clunet, 1119; App. Lyon (Apr. 30, 1907) 35 Clunet, 141. See also Bouteron, 224; 4 Lyon-Caen & Renault, 542-543, n.; Surville & Arthuys, 719; Thaller, 654; Vincent & Penaud, 339-340; 4 Weiss, 442-443, n.

<sup>30</sup> The same provision is found in the Hungarian Law of 1876, art. 95; the Scandinavian Law of 1880, art. 84; the Swiss Law of Obligations of 1881, art. 822; the Commercial Code of Serbia, art. 168; the Russian Law on Bills and Notes, art. 82. See 4 Weiss, 443.

The exception to the application of the personal law was adopted in Germany only after a long debate at the Conference of Leipzig, on grounds of commercial convenience, by a vote of 10 to 9. It was aimed primarily at the special incapacities relating to bills and notes which existed in many of the continental states. The wording of the exception in favor of the *lex loci contractus* was couched, however, in such broad terms as to cover all kinds of incapacity, general or special. See Staub, art. 84, n. 6; 2 Meili, 327-329.

<sup>31</sup> A similar provision exists in regard to capacity to sue or to be sued. Such

The above concession in favor of the *lex loci contractus* is restricted to transactions entered into in Germany.<sup>32</sup> Whenever the contract is executed in a foreign country, the national law of the party in question will control without qualification. This is true though the law of the foreign country should make a concession in favor of the *lex loci contractus* similar to that of the German law.<sup>33</sup> Where the national law has adopted the *lex domicilii* as the rule governing capacity, and the domicile of the party is in Germany, German law will be held to control.<sup>34</sup>

### 3. Italian Law.

According to article 6 of the Preliminary Dispositions of the Civil Code:

"The status and the capacity of persons and the family relations are regulated by the law of the state of which they are subjects."

Article 58 of the Commercial Code provides, however, that

"The form and the essential requisites of commercial obligations . . . are governed, respectively, by the laws and usages of the place where the obligations are created. . . ."

An express reservation is made by article 58 in favor of the application of article 9 of the Preliminary Dispositions of the Civil Code, according to which the national law will govern when both parties have the same nationality.

The Italian authors are divided on the question whether the "essential requisites of commercial obligations" are to be understood as including capacity.<sup>35</sup> In the opinion of some,<sup>36</sup> the article refers only to the general objective requirements for bills and notes specified in article 251 of the Commercial Code, and not to capacity.

"According to the opinion that has finally prevailed," says Diena,<sup>37</sup> "the essential requisites of commercial obligations, to which article 58 alludes, are all those contemplated by article 1104 of the Civil Code, among which is included the capacity to contract."

The *lex loci contractus* will determine not only the capacity of foreigners in Italy, but also that of Italian subjects in foreign countries.<sup>38</sup>

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capacity exists if it is conferred by the national law or by German law. Sec. 55, German Code of Civil Procedure; Barazetti, 43.

<sup>32</sup> The place of performance is immaterial, R G (Oct. 16, 1885) 14 Clunet, 630; Bettelheim, 74; Staub, art. 84, n. 2, 4.

<sup>33</sup> Bar, 669; Niemeyer, 125-126.

<sup>34</sup> Art. 27, Introductory Act; Staub, art. 84, n. 3.

<sup>35</sup> The views of the different writers are stated in 1 Diena, *Trattato*, 14-15, n.; Ottolenghi, 28-43.

<sup>36</sup> See Ottolenghi, 37-38.

<sup>37</sup> 1 Diena, *Trattato*, 138.

<sup>38</sup> 3 Diena, *Trattato*, 53. See also Marghieri, 276; Olivi, 824-825, n.



## IV. LATIN-AMERICAN LAW.

1. *Convention of Montevideo.*

No special provision governing capacity to contract by bill or note having been adopted by the Convention on Commercial Law, the general rule laid down in the Convention on International Civil Law controls. The latter adopts the law of the domicile.

As between the Argentine Republic, Bolivia, Paraguay, Peru and Uruguay, by whom the above conventions have been ratified,<sup>39</sup> the *lex domicilii* is therefore the governing law.<sup>40</sup>

2. *Argentine Law.*

The law of domicile is applied generally in the determination of capacity to contract.

Article 6 of the Civil Code provides:

"The capacity or incapacity of persons domiciled in the territory of the republic, whether nationals or foreigners, is governed by the laws of this code, even though acts performed or property situated in a foreign country are involved."

Article 7 of the same code provides:

"The capacity or incapacity of persons domiciled without the territory of the republic is governed by the laws of their respective domicile, even though acts performed or property situated in the republic are involved."

Article 982 has the following provision:

"The validity or nullity of juridical acts *inter vivos* or of dispositions by last will, with respect to the capacity or incapacity of the parties, shall be governed by the laws of their respective domicile (Arts. 6 and 7)."<sup>41</sup>

<sup>39</sup> As to Argentina, see decree of December 11, 1894, in *Registro nacional de la republica Argentina* (año 1894, segundo semestre) 792. As to Bolivia, see decree of November 17, 1903, in *Anuario de leyes, decretos, resoluciones y ordenes supremas* (año 1903) 336, and decree of February 25, 1904, in *Anuario de leyes, decretos, resoluciones y ordenes supremas of Bolivia* (año 1904) 134. As to Paraguay, see decree of September 3, 1889, in *Registro oficial de la republica del Paraguay* (1888) 110. As to Peru, see decree of November 4, 1889, in *Leyes y resoluciones expedidas por los congresos ordinarios y extraordinarios de 1888-1889, coleccionadas y anotadas por el Dr. D. Ricardo Aranda* (Lima, 1891) 250, 261. As to Uruguay, see decree of October 3, 1892, in 2 *La legislacion vigente de la republica del Uruguay*, by Pablo V. Goyena (Montevideo, 1898) 1524, n.

<sup>40</sup> In the *Commercial laws of the world*, "Argentina," 283, 286, a statement is made by A. Schuler, barrister of Asuncion, that by the terms of the Convention of Montevideo its provisions are applicable subsidiarily to all other countries. This is incorrect, for there is no provision to that effect in the Convention. All the learned barrister can have meant is that in the absence of positive authority on a given point the rule adopted by the Convention of Montevideo would naturally be accepted by the courts.

<sup>41</sup> "A person changing his domicile from a foreign country to the territory of

Article 738, paragraph 1, of the Commercial Code corresponds to article 58 of the Italian Commercial Code, but it is clear from paragraph 2 of the article that it does not refer to capacity.

### 3. *Brazilian Law.*

Brazil did not become a party to the Conventions on International Civil Law and Commercial Law concluded at the Congress of Montevideo. In the consolidation and in the new consolidation of the Brazilian law<sup>42</sup> the law of nationality was adopted as the rule governing capacity. The Civil Code of 1916 accepts this rule. Sole paragraph of article 42 of the Bills of Exchange Act of 1908 qualifies the rule with reference to bills of exchange. It provides as follows:

"Having capacity according to Brazilian law a foreigner is bound by the declaration which he signs, notwithstanding his incapacity according to the law of the country to which he belongs."

Without doubt this rule applies only to contracts entered into by foreigners in Brazil.

### 4. *Chilean Law.*

Chile did not ratify the Conventions of International Civil Law and of Commercial Law concluded at the Congress of Montevideo. The principal provisions of the Civil Code relating to capacity are found in articles 14 and 15, which provide as follows:

Art. 14. "The law is obligatory upon all inhabitants of the republic, including foreigners.

Art. 15. "Chileans remain subject to the national laws governing obligations and civil rights, notwithstanding their residence or domicile in a foreign country,

1. "So far as they relate to the status of persons and to their capacity to execute certain acts which are to take effect in Chile."

The meaning of these sections, though not clearly expressed, appears to be that the law of the place of contracting governs, a qualification of the rule being recognized as regards Chileans contracting abroad when the contract is to be performed in Chile. In the latter case Chilean law is to govern.<sup>43</sup>

## V. JAPANESE LAW.

Japan has accepted the provisions of the German law. Article 3 of the Law Concerning the Application of Laws in General agrees with article 7 of the Introductory Act to the German Civil Code.

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the republic, who is of full age or an emancipated minor, according to the laws of this code, is so considered even though he be a minor or not emancipated, according to the laws of his former domicile." Art. 138, Argentine Civil Code.

<sup>42</sup> See Carvalho, art. 25; R. Octavio, *La capacité*, 781; R. Octavio, *Le droit*, 131.

<sup>43</sup> Fabrès, 139; Errázuriz, 30; 1 Borja, 320; Salas, 45.

Article 29 accepts also the *renvoi* theory with the limitations laid down by article 27 of the Introductory Act to the German Civil Code.<sup>44</sup>

## VI. CONVENTION OF THE HAGUE.

Article 74 of the Uniform Law of the Convention of the Hague provides:

"The capacity of a person to bind himself by a bill of exchange shall be determined by his national law. If such national law declares the law of another state to be applicable, such latter law shall be applied.

"A person who lacks capacity under the law indicated in the preceding paragraph shall nevertheless be validly bound, if he has entered into the obligation within the territory of a state according to the law of which he would have been competent."

## VII. DISCUSSION.

From the preceding comparative study it is seen that no country whose law we have studied, except Argentina, applies without qualification the personal law of the parties (the *lex domicilii* or the *lex patriae*) in the determination of the capacity of parties to enter commercial contracts.<sup>45</sup> This is most noteworthy in view of the strong stand taken by continental Europe in support of the doctrine that the personal law should govern the capacity of parties in general. Individual authors, in the theoretical atmosphere of their study, have expressed the view that the principle of the *lex patriae* should not yield in any respect, on grounds of expediency, to the *lex loci contractus*.<sup>46</sup> But whenever confronted with the needs of business life, they have not hesitated to make such concessions. This appears most distinctly from the resolutions adopted by international associations, conferences, and congresses. The Association for the Reform and Codification of International Law, at its session at Antwerp in 1877,<sup>47</sup> the Congress of Commercial Law held at Antwerp in 1885,<sup>48</sup> the Con-

<sup>44</sup> Minakuchi, 24.

<sup>45</sup> *Contra*: Quebec, where the *lex domicilii* is applied, even though the party would have capacity under the law of Quebec, where the contract was entered into. *Jones v. Dickinson*, 7 Quebec Super. Ct. 313; Lafleur, 147.

<sup>46</sup> Audinet, 607-609; Despagnet, 986; Ottolenghi, 16; Surville & Arthuys, 719.

<sup>47</sup> *Revue de droit international* (1877) 411.

The resolution adopted was as follows: "*La capacité d'un étranger en matière de lettre de change est en général réglée d'après son statut personnel.*"

"*Toutefois l'étranger, lorsqu'il contracte des engagements se rattachant aux lettres de change dans un pays autre que le sien, est régi par les lois de ce pays, sans pouvoir invoquer sa loi nationale.*"

<sup>48</sup> 12 Clunet, 629.



gress of Commercial Law held at Brussels in 1888,<sup>49</sup> and the Institute of International Law at its session at Brussels in 1885,<sup>50</sup> all indorsed the *lex loci contractus* as an alternative rule to the law of nationality whenever a party who is incompetent under his foreign personal law has capacity to contract under the law of the state where the contract is made. The Institute of International Law, at its session in Lausanne in 1888,<sup>51</sup> recommended a somewhat narrower rule which would allow the *lex loci* to impose liability only in the event that the incompetent misled the other party or "grave circumstances" existed, the appreciation of which was to be left to the courts.

Several members of the Institute of International Law have suggested still other compromise systems. At the meeting of the Institute at Lausanne, Westlake<sup>52</sup> proposed the *lex loci contractus* in substitution for the *lex patriae* when the party who was incompetent under his national law was 21 years of age, and the other contracting party was ignorant of such incapacity. Bar<sup>53</sup> was of the opinion that the *lex loci contractus* should take the place of the *lex patriae* when the person dealing with the party who is incompetent acted in good faith. In his text-book on Private International Law, Bar expressed his view in the following form:

"It is immaterial whether or not a person has capacity to bind himself by bill, be that incapacity a result of a general incapacity to contract or not, if by the law of the place where the bill is issued the debtor had this capacity, and the person who sues on the bill or some predecessor of his in title was in good faith when he acquired the bill. Good faith is presumed."<sup>54</sup>

Goldschmidt submitted that the contract should be sustained, notwithstanding an incapacity under the personal law, if it complied with the law governing the validity of the contract in other respects.<sup>55</sup>

In addition to the above there may be mentioned the view recently expressed by Professor Jitta, one of the most distinguished writers on the subject of the conflict of laws. In his opinion the capacity to contract by bill or note should be governed by the law of what he terms "the fiduciary place of issue," by which he means the law of the place of issue mentioned in the bill or note, or the law of the party's domicile, if he fails to insert the place where his contract is

<sup>49</sup> 4 Weiss, 444.

<sup>50</sup> 8 Annuaire, 97.

<sup>51</sup> 10 Annuaire, 103-104.

<sup>52</sup> 10 Annuaire, 102.

<sup>53</sup> 10 Annuaire, 96.

<sup>54</sup> Bar, 668, n.; see also 7 Ehrenberg's Handbuch, 382.

<sup>55</sup> See 10 Annuaire, 80-81.

executed, or the law of the state in which a person exercising a trade or profession has his place of business or office.<sup>56</sup>

As the question before us has nothing to do with the performance of the contract, the *lex loci solutionis* can apply only on one of two theories, either that it represents the *situs* of the obligation, or that it expresses the probable intention of the parties. That neither of these positions is tenable as regards the formal and essential requisites of bills and notes will be shown in another part of this work. The same is true with respect to capacity. In this place the bare statement must suffice that the intention theory as such is inapplicable to capacity. Before there can be a legal intent, there must be capacity to form such intent; and such capacity, in the very nature of things, can be conferred only by law. This is admitted by the decisions of the courts of all countries, apart from a few *dicta* in this country,<sup>57</sup> and by all text-writers. Thus, there remain for our consideration, the *lex loci contractus*, and the *lex domicilii* or the *lex patriae*.

The objection to the strict application of the personal law in commercial contracts has been expressed by Burge in the following words:

"The obstacles to commercial intercourse between the subjects of foreign states would be almost insurmountable if a man must pause to ascertain, not by the means within his reach, but by recourse to the law of the domicile of the person with whom he was dealing, whether the latter had attained the age of majority, and, consequently, whether he was competent to enter into a valid and binding contract."<sup>58</sup>

As between the unqualified *lex domicilii* and that of the *lex loci contractus*, the balance of convenience would clearly favor the latter. The real question at issue is whether a compromise system between the personal law (*lex domicilii* or *lex patriae*) and the *lex loci contractus*, in the form in which it obtains in France or Germany,<sup>59</sup> or in one of the other forms suggested above, is not preferable to that of the *lex loci contractus* pure and simple, which is the rule in the United States and Italy.

Supporters of the compromise system believe that the personal law should not be discarded in its entirety and that the needs of commerce can be sufficiently met by certain concessions to the law of the place where the contract was entered into.

Little argument is needed to show that neither the French nor the

<sup>56</sup> 2 Jitta, 53.

<sup>57</sup> See *Mayer v. Roche* (1909) 77 N. J. L. 681, 75 Atl. 235; *Basilea & Calandra v. Spagnuola* (1910) 80 N. J. L. 88, 77 Atl. 531.

<sup>58</sup> 2 Burge, 477.

<sup>59</sup> *Ante*, pp. 65-67.



German system can be approved. The French courts have been inclined, in the case of contracts made in France, to protect French subjects acting with due care against the incapacity of the other contracting party existing under the *lex patriae*. The objection to this qualification of the personal law is the distinction made between citizens and foreigners. If the security of commerce demands that an incapacity existing under foreign law shall not be set up, the same rule should be applied to citizens and foreigners alike. The German law is equally arbitrary. It applies the *lex loci* to transactions entered into in Germany when it will bind the party who is incompetent under his personal law, but does not recognize that a German subject who has made a contract abroad can be held under like conditions. The giving of such a privileged position to citizens is in violation of that principle of equality which is fundamental in the conflict of laws.

The recommendation of the Institute of International Law adopted at its session at Lausanne is open to the serious objection of indefiniteness; for the *lex loci contractus* is to apply when "grave circumstances" exist, the appreciation of which is to be left to the courts. Such a qualification is entirely too vague to serve the purpose of commercial security.

The compromise system that has the weightiest support<sup>60</sup> allows the application of the *lex loci contractus* whenever it will sustain the contract of a party who is incompetent under his personal law. Of the individual views above mentioned, those of Westlake and Bar do not differ essentially from the compromise view just stated. Both would require, for the application of the local law, that the party dealing with the incompetent shall have been ignorant of the latter's incompetency (Westlake) or shall have acted in good faith (Bar), Westlake requiring in addition that the incompetent be 21 years of age. Meili regards the rule suggested by Bar as the best, and as satisfying all "rational commercial needs."<sup>61</sup> Goldschmidt<sup>62</sup> properly remarks, however, that the condition of good faith opens the door wide to difficult questions of fact and that, because of this, such a rule forms too unstable a basis for the security of international relations. The same objections may be raised also against Westlake's proposition.

Goldschmidt's view differs from that of the majority before mentioned in his substitution of the law governing the contract for that

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<sup>60</sup> It will be recalled that it was recommended by the Association for the Reform and Codification of Law (1887); by the Congress of Commercial Law of Antwerp (1885); by the Congress of Commercial Law of Brussels (1888); by the Institute of International Law (1885); and by the Convention of the Hague (1912).

<sup>61</sup> 2 Meili, 326.

<sup>62</sup> 10 Annuaire, 91.



of the *lex loci contractus*. In a state or country which has adopted the *lex loci solutionis* or the "law intended by the parties" for the determination of the validity of contracts, a person who is competent under such law would be bound under this rule notwithstanding the fact that he is incompetent under the *lex domicilii* and the *lex loci contractus*.

For practical purposes it may be said, then, that there are only two leading views involving a compromise between the personal law and the *lex loci contractus*: (1) The majority view, which sustains the contract, as far as capacity is concerned, if it satisfies either the personal law or that of the place of contracting; and (2) Goldschmidt's view, which regards the contract as valid if it complies with the requirements of the personal law or with those governing the contract in other respects. Widely differing from these is the view entertained by Jitta, according to which the law of the place of issue mentioned in the instrument is to govern, and only in the absence of such an indication the law of the domicile, or, in the case of a merchant or a professional man, the law of the state in which he has his place of business or office.

What are the merits of these views as compared with the American and Italian rule, which supports the *lex loci contractus*?

A recent writer<sup>63</sup> justifies in the following manner the application of the *lex loci contractus* so far as it relates to business contracts:

"In an age when time is precious it would be intolerable in civic life, and business would be at a standstill, if in every transaction of daily occurrence one had to stop and ask the other party to a contract what his nationality was, where he had been born, where he was domiciled, how long he had lived in the country of his domicile, what his age was, and, if the person were a woman, whether she was married or unmarried, where her husband resided, and how long he had resided there; and, in fact, to inquire into the whole history of the person. And even then the question of the person's capacity would still be uncertain, until and unless an expert on foreign law had been consulted. A rule of law which would lead to such a state of affairs would be not only intolerable, but also unjust, not only to the party that had to make all those inquiries, but also to the other who had to be subject to the 'cross-examination.' The adoption of the *lex loci contractus* in cases of business contracts is therefore based on necessity and justice, which must be the foundation of every rule of law."

In behalf of the *lex loci contractus* the following words of Justice Gray, from his opinion in *Milliken v. Pratt*,<sup>64</sup> may also be quoted:

"In the great majority of cases, especially in this country, where it is so common to travel, or to transact business through agents, or

<sup>63</sup> Cheng, 71.

<sup>64</sup> (1877) 125 Mass. 374, 382, 28 Am. Rep. 241.

to correspond by letter, from one state to another, it is more just, as well as more convenient, to have regard to the law of the place of the contract, as a uniform rule operating on all contracts of the same kind, and which the contracting parties must be presumed to have in contemplation when making their contracts, than to require them at their peril to know the domicile of those with whom they deal, and to ascertain the law of that domicile, however remote, which in many cases could not be done without such delay as would greatly cripple the power of contracting abroad at all."

Burge adds the following consideration:<sup>65</sup>

"But if the principle be correct that the *lex loci contractus* ought to determine the validity of a contract when that validity depends on the capacity of the contracting party, it must be uniformly applied whether the law prevailing in the domicile be that which capacitates or incapacitates. For it would not be reasonable that two different laws should be applied to one and the same contract, and that the liability of one of the parties should be decided by the *lex loci contractus* and that of the other by the *lex loci domicilii*."

In connection with the foregoing quotations it must be borne in mind that Justice Gray and Burge discuss the problem purely as a judicial question, and do not express any view upon it from the standpoint of legislation. Story calls attention to the difference between the two viewpoints. Commenting upon a statement in *Saul v. His Creditors*,<sup>66</sup> he says:

"The case first put seems founded upon a principle entirely repugnant to that upon which the second rests. In the former case, the law of the place of the domicile of the party is allowed to prevail, in respect to a contract made in another country. In the latter case, the law of the place where the contract is made, is allowed to govern without any reference whatsoever to the law of the domicile of the party. Such a course of decision certainly may be adopted by a government if it shall so choose. But then it would seem to stand upon mere arbitrary legislation and positive law, and not upon principle. The difficulty is in seeing how a court, without any such positive legislation, could arrive at both conclusions. General reasoning would lead us to the opinion that both cases ought to be decided in

<sup>65</sup> Vol. 2, p. 483.

<sup>66</sup> The passage referred to was the following:

"But reverse the facts of this case, and suppose, as is the truth, that our law placed the age of majority at twenty-one; that twenty-five was the period at which a man ceased to be a minor in the country where he resided; and that at the age of twenty-four he came into this state, and entered into contracts;—would it be permitted that he should, in our courts, and to the demand of one of our citizens, plead, as a protection against his engagements, the laws of a foreign country, of which the people of Louisiana had no knowledge, and would we tell them that ignorance of foreign laws, in relation to a contract made here, was to prevent them enforcing it, though the agreement was binding by those of their own state? Most assuredly, we would not." *Saul v. His Creditors* (1827, La.) 5 Mart. N. S. 569, 597-598.



the same way, that is, either by the law of the domicile of the party, or by that of the place where the contract is actually made. Many foreign jurists maintain the former opinion, some the latter.<sup>767</sup>

As a judicial question it might naturally be felt that an alternative rule in the form of the foregoing compromise systems could not be adopted by our courts without the aid of positive legislation and that a choice had to be made between the *lex domicilii* and the *lex loci contractus*. In one or two instances, it is true, English and American courts have sanctioned an alternative rule either actually or in effect. For example, the English case of *In re Hellmann's Will*<sup>68</sup> held that a legacy under an English will might be paid to a German legatee on his attaining full age according to English law or according to the law of Germany, whichever first happened. The American courts, in their eagerness to uphold contracts against the defence of usury, have allowed the parties to contract with reference to the law of the place of making or with reference to that of the place of performance or even with reference to the law of a third state with which the contract was connected.<sup>69</sup> But these cases represent outstanding exceptions in the conflict of laws to the general attitude of Anglo-American courts. They have declined to sanction a rule in the alternative even in the matter of the formal requirements of instruments,<sup>70</sup> in regard to which the maxim *locus regit actum* in a permissive sense has been recognized on the continent for centuries. This maxim has since been adopted by statute in England as regards wills disposing of personalty, and in many jurisdictions of this country as regards both wills and deeds. A will of personal property is valid under these statutes if it satisfies, as regards formal execution, the law of the testator's domicile or that of the place of execution; and a will devising realty or a deed of land, if it conforms to the law of the *situs* or to the *lex loci actus*. In like manner it might be provided by statute that a legal transaction or, to narrow the question to the subject under consideration, a commercial contract, shall be valid, as regards capacity, if it meets the requirements of the law of the place of execution or those of another state, be that law the *lex domicilii* or the *lex loci solutionis*. But is there a sufficient reason for the adoption of such an alternative rule in this instance?

<sup>67</sup> Story, 96-97.

<sup>68</sup> (1866) L. R. 2 Eq. 363; 14 Wkly. Rep. 682.

<sup>69</sup> *Miller v. Tiffany* (1863) 1 Wall. 298, 17 L. E. 540; *Arnold v. Potter* (1867) 22 Iowa, 194; *Green v. Northwestern Trust Co.* (1914) 128 Minn. 30, 150 N. W. 229; *Scott v. Perlee* (1883) 39 Ohio St. 63.

<sup>70</sup> See *Stanley v. Bernes* (1830) 3 Hagg. Eccl. 373; *Moultrie v. Hunt* (1861) 23 N. Y. 394.



Field recommends the *lex loci contractus* as the rule governing capacity to contract. He states:<sup>71</sup>

"The civil capacities and incapacities of an individual in reference to a transaction between living persons, except so far as it affects immovable property, . . . are governed by the law of the place where the transaction is had, whatever may be his national character or domicile."

In answer to the continental writers who dwell upon the inconvenience which would result from a fluctuating rule of capacity upon every accidental change of the person or of his movable property, he says:

"The inconvenience of a fluctuating rule is an inconvenience to the individual only, requiring him to ascertain and conform to the law of the place where he may be. It is the most convenient form for facilitating commercial transactions and the administration of justice."<sup>72</sup>

These words were written before the Institute of International Law and the international commercial congresses above mentioned had indorsed the view upholding a commercial contract with respect to capacity if it satisfied either the personal law or the law of the place where the contract was made. It is interesting to note, therefore, that Field had reached the same result, in an independent way, as regards foreign infants. With respect to them he suggested the following exception:

"543. No transaction had by a foreigner, being one between living persons, is voidable on the ground of his infancy, except so far as it may affect immovables, if either the law of his domicile, or the law of the place where the transaction is had, sustains his capacity."

In comparing the merits of the compromise systems put forward on the continent with those of a system applying exclusively the *lex loci contractus*, the difference in the point of view between the continental and American law must be clearly borne in mind. On the continent the established rule governing capacity is considered, as a matter of principle, the personal law (the *lex patriae* or the *lex domicilii*). The only question as regards the capacity to execute bills and notes, therefore, is whether the personal law should not yield on grounds of commercial convenience, at least in part, to the law of the place where the contract is made. The problem assumes quite a different aspect in the United States, where the simplicity and convenience of the *lex loci contractus* as the governing law have seemed so manifest as to overshadow completely the claims of the *lex domicilii*.<sup>73</sup> Although

<sup>71</sup> Sec. 542.

<sup>72</sup> p. 380.

<sup>73</sup> The majority of an infant for the purpose of receiving his property from his

a uniform law would raise the question in a somewhat different form by reason of the fact that it would be concerned chiefly with international rather than with interstate relations,<sup>74</sup> nevertheless the person proposing the change would have the burden of proving the desirability of modifying the present law so as to sustain a bill or note, as regards capacity, when the party in question, though incompetent under the *lex loci contractus*, has capacity under the *lex domicilii*.

All partisans of the *lex domicilii* having been compelled, on grounds of commercial convenience, to admit the necessity of the application of the *lex loci contractus*, as regards capacity to enter commercial contracts, when such law is unfavorable to a given party, the question next arising is why the same law, rather than the *lex domicilii*, should not govern also when it is favorable to such party. The main argument advanced by continental writers in support of the *lex domicilii* in the matter of capacity is the following,—that rules of law which are concerned with capacity to act have for their object the protection of the parties against loss by their own acts.

“This care for the person must be a permanent one,” says Bar,<sup>75</sup> “if it is to have effect; it extends, therefore, to all persons who permanently belong to the State, *i.e.* who are domiciled there.”

In other words, it is because of the uniform and permanent protection which the parties need and which the *lex domicilii*, *ex hypothesi*, is best able to afford, that its claim to a preference over any other law is urged. But if the *lex domicilii* must yield to the *lex loci contractus* in all commercial contracts in the interest of commercial security, it fails to afford the very protection which its adoption was intended to give. Under these circumstances there remains no real basis for its application. For it must be remembered that the *lex loci contractus* is put forward by most of the advocates of the compromise view as an alternative rule entitled to extraterritorial recognition and not merely as an exception to the *lex domicilii*, resting upon the public policy of the state where the contract is made, and hence having only an intraterritorial effect.<sup>76</sup> If the *lex loci contractus* be adopted as

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guardian is determined, however, by the *lex domicilii*. *Woodward v. Woodward* (1889) 87 Tenn. 644, 11 S. W. 892.

<sup>74</sup> The N. I. L. has unified the law of bills and notes in this country to all intents and purposes.

<sup>75</sup> p. 306.

<sup>76</sup> It would be otherwise if the French view were adopted, according to which a foreigner contracting with a French subject in France, the latter being in the exercise of due care, cannot take advantage of an incapacity existing under his personal law. Such a qualification of the personal law, which is based solely on the ground of policy which has for its object the protection of subjects, would not be recognized by the courts of other states.



the governing rule when it will sustain the contract, the logic of the situation and sound principle demand that it control also when its application will defeat the contract.<sup>77</sup>

In the absence of a willingness on the part of the American law to accept the *lex domicilii* as the law governing both status and capacity, its introduction as an alternative rule with the *lex loci* in the matter of commercial capacity can be justified only on grounds of expediency based on a desire to sustain contracts. What does sound policy require in this regard? The statutes relating to the formal execution of wills and deeds fall short of giving any support to the proposition under discussion, for neither the English nor the American statutes include contracts. Even if it were conceded, for the sake of argument, that the reasons or policy which led to the adoption of these statutes apply with equal force to contracts, it would not follow that they would embrace capacity as well. There is a fundamental distinction between capacity and formalities, and a policy applicable to the one may have no bearing upon the other. Before the statutes referred to were passed, a will of personal property not executed in the form prescribed by the law of the testator's domicile at the time of death was void, even though it conformed to the law of the testator's domicile at the time of execution and to the law of the place of execution.<sup>78</sup> A will or deed disposing of realty was null and void unless it satisfied the law of the state in which the property was situated.<sup>79</sup> Following the continental practice, many American legislators felt that the validity of a will or deed, as regards formal execution, should be recognized, under an alternative rule, if the testator or grantor had followed the requirements of the law of the state in which the will or deed was executed. The rule of *locus regit actum* which was thus sanctioned sprang from a desire to facilitate international intercourse.<sup>80</sup> Its sole object is to free the parties from the embarrassments which may follow if they must clothe their legal transactions at their peril in a form prescribed by a law to which they have no ready access at the time.

The situation is quite different as regards capacity. The question

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<sup>77</sup> "There is, no doubt, much to be said for a thorough-going application of the *lex loci actus* to rule capacity to undertake these obligations, such as prevails in the jurisprudence of England and in that of the United States, although it does not suit the circumstances of the continent of Europe, and may, as intercourse increases, soon bring disadvantages even to England and to the United States." Bar, 665.

<sup>78</sup> *Stanley v. Bernes* (1830) 3 Hagg. Eccl. 373; *Moultrie v. Hunt* (1861) 23 N. Y. 394.

<sup>79</sup> *Succession of Hasling* (1905) 114 La. 294, 38 So. 174.

<sup>80</sup> See 2 Lainé, 116 *et seq.*



here is whether a party who is incompetent under the *lex loci contractus*, which applies on principle, shall be bound nevertheless if he is competent to contract under the law of his domicile or the law of some other state that is deemed to govern the validity of contracts in other respects. Before an answer can be given, the question must be considered in its broader aspects. It raises many grave problems involving the basic theory of the rules of private international law. If a rule in the alternative is proper in the matter of commercial capacity because of its tendency to give stability to international transactions, why should not the same policy require its extension to capacity in general? And if the rule is expedient in matters relating to capacity and form, why should it not also be applied to the other essential requirements of contracts and, indeed, to those of all other legal transactions? Heretofore it has been generally taken for granted in the science of private international law that a unitary rule governing each legal relationship would best answer the needs of an international community. The maxim *locus regit actum* has constituted the only exception in matters of formal requirements; and, according to some writers,<sup>81</sup> even this rule has lost its original permissive character and has become a unitary and mandatory rule. Must it be conceded today that the aim of the science of the conflict of laws to discover unitary rules for the solution of the problems arising from the diversity of legal systems has so far failed of accomplishing its object that international justice would be promoted if the validity of legal transactions in general, as regards capacity, form and legality, were sustained upon principles of the broadest liberality?

The writer is of the opinion that the adoption of alternative rules in matters affecting the validity of legal transactions would afford, at least in some instances, more satisfactory results than it is possible to attain as long as a unitary rule must be found. Abundant proof of this fact is furnished by the cases and in the juristic literature dealing with the essential validity or legality of contracts. The vast bulk of the case law and also the almost perfect consensus of opinion on the part of continental and English writers on the subject of the conflict of laws are to the effect that a contract is valid if it meets the requirements of the law with reference to which the parties must be deemed to have contracted.<sup>82</sup> In most of the decided cases, the law of the state that would sustain the contract was found to be the appli-

<sup>81</sup> See Buzzati, 142 *et seq.*

<sup>82</sup> The law of the English courts, of the Federal courts, and of each of the state courts is stated in a series of articles by Professor Beale on *What law governs the validity of a contract* (1909-10) 23 Harvard Law Review, 1, 79, 194, 260.

catory law and not infrequently a presumption was raised that the parties contracted with reference to such law.<sup>83</sup> With the recognition of the propriety of alternative rules in the conflict of laws, such cases, which now rest upon an unsatisfactory basis, would present no difficulties whatever. Neither the territorial theory, which underlies the doctrine of the *lex loci contractus*, nor the intention theory, which is now dominant so far as it applies to contracts, leads to satisfactory results, as the actual state of our law sufficiently attests. A rule to the effect that the validity of a contract as regards capacity, form, and legality should be recognized if it satisfies the *lex loci contractus* or the law of some other state with which the contract has an intimate relation might, with proper limitations, furnish a more secure basis for international transactions than has existed heretofore.

As for bills and notes, an alternative rule cannot be applied to matters of form or legality for the reason that the obligations created by such instruments depend upon, and are therefore inseparable from, its formal and essential requirements, as will be shown below; and an alternative rule cannot possibly control the *obligation* of contracts. Limited, however, to capacity, a rule which would sustain a bill or note, or a particular contract thereon, if it satisfied either the *lex loci contractus* or the *lex domicilii*, would not only be practicable, but would possess certain advantages over the unitary rule of the *lex loci contractus*. It would promote the negotiability of such instruments by giving to the contracts of the different parties another chance of validity. It would also bring the Anglo-American law, so far as it can be done, into harmony with the best thought on the subject in continental Europe.

Nor would the rule suggested constitute an injustice to the party obligated. True, he cannot escape liability under it unless he lacks capacity under both the *lex domicilii* and the *lex loci contractus*; but the justice or injustice of a rule cannot be determined from the point of view of a party who is desirous of avoiding his obligations. A person who, though domiciled in one state, wishes to transact business in another, cannot in good conscience complain of a rule which enables him to do so more effectively by increasing his capacity to contract.

As against the advantages before mentioned there must be offset, however, certain disadvantages which inhere in every alternative rule. The *lex loci contractus* as such has simplicity and certainty in its favor. These important qualities would be lost by the adoption of the *lex domicilii* as an alternative rule, for the latter might raise the

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<sup>83</sup> See for example, *Pritchard v. Norton* (1882) 106 U. S. 124, 1 Sup. Ct. 102, 27 L. E. 104.



issue of domicile in every case in which a party is incompetent under the law of the place where the contract is made. If the question is to be considered solely from a national aspect, the author is obliged to admit that a sufficient case in favor of the *lex domicilii* as an alternative rule in the above sense has not been made out.

The author would submit, however, that any legislation dealing with the conflict of laws, especially all statutes relating to negotiable paper, should, so far as may be consistent with national interests, maintain an international point of view, with the object of bringing about a greater harmony in the rules of the conflict of laws of the different countries. Each rule should be tested not only with respect to its local operation but also with respect to its international effect. Unless the national interests are of paramount importance that rule should be adopted which would bring our law more nearly into harmony with the law existing in other countries. If the emphasis is placed exclusively upon the local interests, to the exclusion of all broader or international considerations, there is no reasonable basis for the hope that the differences now existing in the rules of the conflict of laws in the different countries will gradually disappear. In the light of the existing law in the different countries there can be no doubt, from an international point of view, that the adoption of a rule which will sustain commercial contracts, as regards capacity, if such capacity exists under the personal law (*lex domicilii*) or under the *lex loci contractus*, should be approved. While the adoption of such a rule in the alternative will not bring about complete uniformity, in view of the fact that so many countries determine the personal law by the *lex patriae* instead of by the *lex domicilii*, a step forward will have been taken toward the unification of the rules of the conflict of laws on the subject of capacity.

If the principle of an alternative rule is to be sanctioned, why should not the law governing the contract in general, rather than the *lex domicilii*, be accepted as the alternative rule, as Goldschmidt suggested before the Institute of International Law? Goldschmidt assumed that the law of the place of performance would govern the contract in general (apart from capacity and form), and such is still the German law<sup>84</sup> and the prevailing rule in this country.<sup>85</sup> Why should a party who is incompetent under the *lex loci contractus* not be regarded in jurisdictions following the above rule as competent to contract if he possesses such capacity under the law of the place

<sup>84</sup> See R G (July 4, 1904) 15 Niemeyer, 285; R G (Apr. 26, 1907) 18 Niemeyer, 177.

<sup>85</sup> See article by Professor Beale in 23 Harvard Law Review, 79, 194.



of performance? If the Uniform Act adopts the *lex loci contractus*, and not the *lex loci solutionis* as the rule controlling the validity and obligation of bills and notes, no ground will be left upon which Goldschmidt's proposition can stand. The only other law that could possibly control the contract would be the personal law, on the theory that the parties must be deemed to have contracted with reference to such law. This would make Goldschmidt's rule coincide with the one discussed above. But if the Uniform Act should follow the weight of authority in this country and accept the *lex loci solutionis* as the law determining the validity and obligation of contracts, Goldschmidt's suggestion would have great force. The problem would then be whether the *lex loci solutionis* should supplant the *lex domicilii* as the alternative rule with the *lex loci contractus*, or whether the Uniform Act should go still further in its liberality and support a bill and note, if capacity exists under the *lex loci contractus*, the *lex domicilii*, or the *lex loci solutionis*.

In the foregoing discussion the assumption has been that the personal statute was controlled by the law of domicile instead of that of nationality, but this assumption is no longer accurate. Since the middle of the last century most of the continental countries and some of the South American countries<sup>86</sup> and Japan have accepted the *lex patriae* as the rule governing status and capacity. This change, which was made largely on account of political instead of purely juridical considerations, cannot be justified from the standpoint of private law. Without going into the arguments *pro* and *con*, it must be sufficient merely to state that the law of nationality is not acceptable either in England or in the United States as a substitute for that of domicile.

Whether the *lex loci contractus* be adopted as an absolute rule or as a qualified rule in one of the alternative forms suggested, its meaning remains to be determined. On the continent it signifies generally the law of the place where the signature is attached.<sup>87</sup> In England and the United States, inasmuch as the contract is not complete until

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<sup>86</sup> In South America juridical opinion seems to be greatly divided. The issue was raised sharply at a meeting of the International High Commission at Buenos Ayres in 1916 in connection with the discussion of the Convention of the Hague and of the Uniform Law relating to bills of exchange and promissory notes. No agreement could be reached and the matter was postponed until the next conference. See Sen. Doc. 739, 64th Congr. 2d sess. 113. See also *Alta Comisión Internacional, Consejo Central Ejecutivo. Estudio sobre una legislación uniforme en materia de letras de cambio y pagarés en las naciones Americanas* (Washington, Imprenta del Gobierno, 1917) 22-42, 303-308.

<sup>87</sup> Audinet, 609-610; Bar, 671; Bettelheim, 76; 2 Grünhut, 572, n. 14. See also Staub, art. 84, n. 2, 4.

the delivery of the instrument, it means the place of delivery.<sup>88</sup> But what if, on the continent, the place mentioned in the instrument is not the place where the signature was actually affixed, and if, in the United States, that place is not the actual place of delivery? Continental law is not settled on the point. The question arises more frequently in connection with the formal execution of a bill or note, or with the obligation arising therefrom. It may arise, however, in connection with capacity whenever the personal law is qualified by that of the *lex loci contractus*. In the matter of *capacity* most authors contend that the law of the place where the signature is actually affixed should control, and not the law of the place indicated in the instrument. They would hold this to be true even as to a holder in due course. To allow an incompetent person to confer capacity upon himself by the simple expedient of dating the instrument or contract from a place according to whose law he would have capacity is regarded by them as opposed to sound public policy.<sup>89</sup>

The place where the signature is actually attached will on principle control also as regards the *formal* requirements;<sup>90</sup> but where the law of the place indicated in the instrument imposes a stricter liability than that of the place where the signature is actually affixed, the party will be held in favor of any holder taking the instrument without knowledge of the facts.<sup>91</sup>

What has just been stated concerning the formal execution of bills and notes applies likewise to the meaning of the *lex loci actus* in connection with the *obligation* of the different contracts placed thereon.<sup>92</sup> If no place is indicated, a party will be liable in accordance with his *lex domicilii* unless he can show that the holder had knowledge of the place where the instrument was actually executed; in that event the law of the latter place will govern.<sup>93</sup>

In this country the place from which a bill or note or an indorsement is dated, is deemed *prima facie* the place of delivery.<sup>94</sup> With

<sup>88</sup> B. E. A. sec. 21; N. I. L. sec. 16.

<sup>89</sup> Bettelheim, 77; 3 Diena, *Trattato*, 52; 2 Grünhut, 570, n. 6; 2 Meili, 327.

Some would protect the holder in due course. See Bar, 688; also decision of Supreme Court of the Empire (Jan. 15, 1894) 32 R G, 118.

<sup>90</sup> Bettelheim, 108-109; 1 Meyer, 650; Minakuchi, 61; Staub, art. 85, n. 3.

<sup>91</sup> 32 R G, 118; Bettelheim, 109; 2 Grünhut, 572; 1 Meyer, 651, 2 Meyer, 368; Minakuchi, 62. Staub favors the law of the place where the signature is actually attached: art. 85, n. 3.

<sup>92</sup> Bettelheim, 159; 1 Meyer, 655; 2 Meyer, 373; Minakuchi, 104-105; Ottolenghi, 216.

<sup>93</sup> Bettelheim, 159; 1 Meyer, 655, 2 Meyer, 373.

<sup>94</sup> *Lennig v. Ralston* (1854) 23 Pa. St. 137; *Second National Bank v. Smoot* (1876, D. Columbia) 2 MacArthur, 371; *Parks v. Evans* (1879, Del.) 5 Houst. 576.

respect to a holder in due course this presumption is conclusive.<sup>95</sup> Where the indorsement does not indicate the place at which it is presumptively made, *i.e.*, delivered, but the original instrument contains such an indication, the indorsement will be deemed made at that place;<sup>96</sup> and if a party has capacity under such law, he will be estopped, as to a holder in due course, to show that he had no capacity under the law of the state where the indorsement was made in fact.<sup>97</sup>

The law of the "fiduciary place of issue"<sup>98</sup> was proposed by Jitta as the governing rule. Although it bears a slight resemblance to the American law above set forth, it differs from the latter too profoundly to be of any practical value in the framing of a uniform law for the United States.

The rules of the American law with respect to the meaning of the *lex loci contractus* should be retained.

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<sup>95</sup> *Towne v. Rice* (1877) 122 Mass. 67; *Quaker City Nat. Bank v. Showacre* (1885) 26 W. Va. 48; *Chemical Nat. Bank v. Kellogg* (1905) 183 N. Y. 92, 75 N. E. 1103, 2 L. R. A. N. S. 299, 111 Am. St. Rep. 717.

<sup>96</sup> N. I. L. sec. 46.

<sup>97</sup> *Chemical Nat. Bank v. Kellogg* (1905) 183 N. Y. 92.

<sup>98</sup> For explanation see *ante*, pp. 71-72.



## CHAPTER II: FORMAL AND ESSENTIAL VALIDITY

### I. IN GENERAL.

The Hague Convention requires a bill or note to be designated as such, the provision being intended to give to the instrument an earmark which will readily identify it.<sup>99</sup> The bill or note must indicate also the date, the place of issue, and the name of the payee.<sup>100</sup> Anglo-American law is different in all of the above respects.

The only form of acceptance recognized by the Convention of the Hague is an acceptance upon the face of the bill itself.<sup>101</sup> In England and the United States it need not be upon the face of the bill.<sup>102</sup> Under the Uniform Negotiable Instruments Act it need not even appear on the bill.<sup>103</sup> An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person, who, on the faith thereof, receives the bill for value.<sup>104</sup>

In England a bill or note may be void for want of a stamp.<sup>105</sup> The Hague Convention prohibits its members specifically from subordinating the validity of engagements assumed in matters of bills and notes to a compliance with the stamp laws, and authorizes them only to suspend the exercise of the rights conferred until the prescribed stamp duties have been paid.<sup>106</sup>

What is the rule in the conflict of laws governing the formal validity of a bill or note?

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<sup>99</sup> According to art. 2 of the Convention, any contracting state may prescribe, however, that bills of exchange issued within its territory which do not bear the designation "bill of exchange" shall be valid, provided they contain the express indication that they are payable to order.

<sup>100</sup> Art. 1, Uniform Law.

Where a bill of exchange does not bear the name of the place of issue it is deemed to have been drawn at the place designated beside the name of the drawer.  
Art. 2, Uniform Law.

<sup>101</sup> Art. 24, par. 1, Uniform Law.

<sup>102</sup> B. E. A. sec. 17 (2) (a).

<sup>103</sup> N. I. L. sec. 134.

<sup>104</sup> N. I. L. sec. 135.

<sup>105</sup> See Stamp Act, 1891, 54 & 55 Vict. ch. 39.

<sup>106</sup> Art. 19, Convention.

## II. ANGLO-AMERICAN LAW.

1. *English Law.*

The rules of the English law are contained in section 72 of the Bills of Exchange Act, which provides as follows:

"Where a bill drawn in one country is negotiated, accepted or payable in another, the right, duties and liabilities of the parties thereto are determined as follows:

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made.

"Provided that:

(a) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue.

(b) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom."

Proviso (a) is restricted in its application by the words "where a bill drawn in one country is negotiated, accepted or payable in another," so that it would not cover the case where suit is brought in England upon a bill drawn, negotiated, accepted and payable in a foreign country.<sup>107</sup> So far as it is applicable, the act adopts the rule laid down by some of the English courts which have declined to enforce the revenue laws of a foreign country.

Proviso (b) departs from the ordinary rules governing the formal validity of contracts in the conflict of laws. Although the *lex loci contractus* is not satisfied as regards requisites of form, a foreign contract shall be regarded as valid as between persons who negotiate, hold, or become parties thereto in the United Kingdom for the purpose of enforcing payment thereof, provided it conforms to the laws of the United Kingdom. The proviso will probably be held to apply also to foreign acceptances and indorsements. Under this proviso, as its words imply, a party who has drawn, accepted, or indorsed a bill or note in a foreign country cannot be held in England unless his contract satisfies the *lex loci contractus*. A mandatory, not merely a permissive, effect is thus given by the Bills of Exchange Act to the rule *locus regit actum*, proviso (b) constituting but a partial exception.

2. *American Law.*

There are comparatively few cases discussing the question of the

<sup>107</sup> See *James v. Catherwood* (1823) 3 D. & R. 190.

formal validity of bills and notes. Those dealing with the matter have usually involved the validity of an oral acceptance of a bill of exchange, or the validity of bills and notes not complying with stamp requirements. The two leading cases on the subject of oral acceptances are *Scudder v. The Union National Bank of Chicago*,<sup>108</sup> and *Hall v. Cordell*.<sup>109</sup> In the former it was held that an oral agreement made in Illinois to accept a draft previously drawn upon the promisor at St. Louis, being valid by the law of Illinois, would support an action against the promisor or acceptor of the draft notwithstanding that by the law of Missouri, where the draft was payable, such oral promise was not sufficient. In the opinion of the Supreme Court of the United States, speaking through Mr. Justice Hunt:

"Matters bearing upon the execution, the interpretation, and the validity of a contract are determined by the law of the place where the contract is made. Matters connected with its performance are regulated by the law prevailing at the place of performance."<sup>110</sup>

This statement is generally cited in support of the doctrine that the law of the place of execution governs the formalities required for the validity of a contract. This expresses, no doubt, the opinion of the court, for Mr. Justice Hunt quotes from Wharton on the *Conflict of laws*, and Parsons on *Bills and notes* to the same effect. Nevertheless, the statement was a mere *dictum* under the facts of the case.

"There is no statute in the state of Illinois," says the learned justice, "that requires an acceptance of a bill of exchange to be in writing, or that prohibits a parol promise to accept a bill of exchange: on the contrary, a parol acceptance and a parol promise to accept are valid in that state, and the decisions of its highest court hold that a parol promise to accept a bill is an acceptance thereof. *If this be so, no question of jurisdiction or of conflict of laws arises.*"<sup>111</sup> The contract to accept was not only made in Illinois, but the bill was then and there actually accepted in Illinois, as perfectly as if Mr. Scudder had written an acceptance across its face, and signed thereto the name of his firm. The contract to accept the bill was not to be performed in Missouri. It had already, by the promise, been performed in Illinois. The contract to pay was, indeed, to be performed in Missouri; but that was a different contract from that of acceptance."

In *Hall v. Cordell* the defendants, residents of Chicago who were temporarily at Marshall, Mo., verbally agreed with plaintiffs, bankers at Marshall, that defendants would accept and pay at Chicago all drafts drawn upon them by one Farlow for cattle bought by Farlow and shipped from Missouri by him to the defendants. The defendants

<sup>108</sup> (1875) 91 U. S. 406, 23 L. E. 245.

<sup>109</sup> (1891) 142 U. S. 116, 35 L. E. 956.

<sup>110</sup> 91 U. S. 406, 412-413.

<sup>111</sup> The italics are the present writer's.



refused to pay upon presentation a draft drawn upon them under this agreement. By statute in Missouri, an agreement to accept bills of exchange must be in writing. The defendants contended that by reason of that statute the contract could not be the basis for a recovery in Illinois, but the Supreme Court of the United States held as follows:

"We are, however, of opinion that, upon principle and authority, the rights of the parties are not to be determined by the law of Missouri. The statute of that state can have no application to an action brought to charge a person, in Illinois, upon a parol promise to accept and pay a bill of exchange payable in Illinois. The agreement to accept and pay, or to pay upon presentation, was to be entirely performed in Illinois, which was the state of the residence and place of business of the defendants. They were not bound to accept or pay elsewhere than at the place to which, by the terms of the agreement, the stock was to be shipped. Nothing in the case shows that the parties had in view, in respect to the execution of the contract, any other law than the law of the place of performance. That law, consequently, must determine the rights of the parties."<sup>112</sup>

If the statement in the *Scudder* case that matters bearing upon execution are determined by the law of the place of execution means that the *lex loci contractus* is the only law which, in the nature of things, can give binding force to the will of the parties, it is inconsistent with the case of *Hall v. Cordell*, which applies the intention of the parties as the test. The cases can be harmonized if the rule *locus regit actum*, which Mr. Justice Hunt mentions in quoting from Wharton, were recognized by the Supreme Court of the United States as having a permissive sense. According to this idea a transaction would be valid, as regards formalities, if it complied with the *lex loci contractus* or with the law of the state which governs the validity of the transaction in other respects. The *Scudder* case would then fall within the first branch of the rule and *Hall v. Cordell* within the second. The objection to this interpretation is that there is no evidence in the opinions of the two cases to indicate that the Supreme Court meant to adopt the rule *locus regit actum* in an optional sense. Nowhere does it appear that the court would subject the formal requirements to a rule differing from that determining the validity of the contract in general. It seems to be assumed throughout that all matters bearing upon the execution of a contract, including all formalities, are subject to one law. In the *Scudder* case this law is said to be the *lex loci contractus*; and in *Hall v. Cordell*,<sup>113</sup> the *lex loci solutionis*, on account of the presumed intention of the parties.

<sup>112</sup> 142 U. S. 116, 120.

<sup>113</sup> The Supreme Court of the United States has never followed a consistent

In both cases the agreement was upheld. Hence it might be suggested that just as in the usury cases, so in the matter of the formal validity of contracts the parties will be "presumed" to have contracted with reference to the law of the place that will support the contract. The difficulty with this conclusion is that the Supreme Court in the *Scudder* case appears to lay down the rule that the *lex loci contractus* governs all matters bearing upon the execution of contracts as an absolute rule, and does not proceed on the ground of "presumptive intent." All that can be safely said is, therefore, that in the opinion of the Supreme Court the validity of a contract as regards form (aside from the Statute of Frauds, which brings in the question of procedure,) is subject to the law controlling the validity of the contract in other respects; and that the Supreme Court, in a desire to uphold the contract, accepted the *lex loci contractus* as the governing law in the *Scudder* case and the *lex loci solutionis* in *Hall v. Cordell*.

Few cases appear to have arisen in the state courts since the decision of the *Scudder* case and *Hall v. Cordell*.<sup>114</sup> Most of the decisions prior to the above cases favored the *lex loci contractus*,<sup>115</sup> and since these decisions the lower federal courts have dealt with the matter in only one or two instances. In *Exchange Bank v. Hubbard*<sup>116</sup> the Circuit Court of Appeals of the Second Circuit applied the principle of the *Scudder* case without referring to *Hall v. Cordell*. When the case came up on a subsequent appeal<sup>117</sup> the court adopted the intention test laid down in *Hall v. Cordell*, and in applying it, reached the conclusion that the parties contracted with reference to the *lex loci contractus*.<sup>118</sup>

theory regarding the validity of contracts in the conflict of laws. See *Pritchard v. Norton* (1882) 106 U. S. 124, 1 Sup. Ct. 102, 27 L. E. 107; *Cox v. United States* (1832) 6 Pet. 172, 8 L. E. 359; *Liverpool & G. W. Steam Co. v. Phenix Ins. Co.* (1889) 129 U. S. 397, 9 Sup. Ct. 469, 32 L. E. 788; *Equitable Life Ins. Co. v. Clements* (1891) 140 U. S. 226, 11 Sup. Ct. 822, 35 L. E. 497; *London Assurance v. Companhia de Moagens do Barreiro* (1897) 167 U. S. 149, 17 Sup. Ct. 785, 42 L. E. 113.

<sup>114</sup> In *Bank of Laddonia v. Bright Coy Commission Co.* (1909) 139 Mo. App. 110, 120 S. W. 648, the St. Louis Court of Appeals applied the law of the place of performance, following *Hall v. Cordell*.

<sup>115</sup> See *Scott v. Pilkington* (1861, N. Y.) 15 Abb. Pr. 280; *Lonsdale v. Lafayette Bank* (1849) 18 Ohio, 126; *Worcester Bank v. Wells* (1844, Mass.) 8 Met. 107; *Bissell v. Lewis* (1857) 4 Mich. 450. This is true also of the formal validity of contracts in general. *Hunt v. Jones* (1879) 12 R. I. 265; *Perry v. Mt. Hope Iron Co.* (1886) 15 R. I. 380; *Dacosta v. Davis* (1854) 24 N. J. L. 319.

<sup>116</sup> (1894) 62 Fed. 112.

<sup>117</sup> (1896) 72 Fed. 234.

<sup>118</sup> The *lex loci contractus* as such appears to have been applied in *Russell v.*

Where the formal requirement consists in the affixing of a stamp or the use of stamped paper for revenue purposes, non-compliance with such a law may result in the invalidity of the obligation, or it may simply preclude the admissibility of the instrument in evidence. In the latter event, the provision, being a procedural one, would have no extraterritorial effect.<sup>119</sup> Where non-compliance with the stamp law renders the instrument void, there is conflict in the authorities. Some courts apply the ordinary rule and deny all relief.<sup>120</sup> Others enforce the contract on the ground that no regard should be paid to foreign revenue laws.<sup>121</sup> A further complication is presented when there is a difference between the law of the place of execution of the contract and the law of the place of its performance; for example, where the law of the place of issue makes the contract void, but the law of the place of performance either has no stamp law, or makes the latter affect merely the admissibility of the instrument in evidence. Assuming that foreign stamp laws are entitled to recognition when they invalidate the contract, the question raised in this case would be similar to that discussed in connection with oral acceptances. In *Vidal v. Thompson*<sup>122</sup> the law of the place of issue was held to govern.

### III. CONTINENTAL LAW.

#### 1. French Law.

A bill or note, its acceptance, or its indorsement is valid, as regards form, if it satisfies the law of the place of execution.<sup>123</sup> There is a tendency<sup>124</sup> on the part of the French courts to give to the rule *locus regit actum*, which was formerly imperative,<sup>125</sup> a permissive

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*Wiggin* (1842) 2 Story, 213, Fed. Cas. No. 12, 165, and in *Garretson v. North Atchison Bank* (1891) 47 Fed. 867.

<sup>119</sup> *Fant v. Miller* (1866, Va.) 17 Gratt. 47; *Lambert v. Jones* (1856, Va.) 2 Patt. & H. 144.

<sup>120</sup> *Satterthwaite v. Doughty* (1853) 44 N. C. 314; *Fant v. Miller* (1866, Va.) 17 Gratt. 47.

<sup>121</sup> *Ludlow v. Rensselaer* (1806, N. Y.) 1 Johns. 94; *Skinner v. Tinker* (1861, N. Y.) 34 Barb. 333.

<sup>122</sup> (1822, La.) 11 Mart. 23.

<sup>123</sup> Trib. Civ. Marseilles (Sept. 5, 1876) 4 Clunet, 425; Comm. Trib. Le Havre (Mar. 19, 1881) 9 Clunet, 80; Paris (Dec. 8, 1883) 11 Clunet, 285; App. Bordeaux (Jan. 24, 1880) 8 Clunet, 360; (June 7, 1880) 8 Clunet, 155; App. Paris (Jan. 12, 1889) 16 Clunet, 291; App. Besançon (Jan. 5, 1910) 6 Darras, 428.

<sup>124</sup> Cass. (June 14, 1899) S. 1900, 1, 225, and note by Professor Pillet; Cass. (Aug. 18, 1856) D. 1857, 1, 39.

<sup>125</sup> App. Douai (Jan. 13, 1887) S. 1890, 2, 148; Trib. Civ. Rouen (July 22, 1896) 26 Clunet, 578.



character.<sup>126</sup> Whether the *lex loci contractus* is applicable to foreign stamp laws appears to be undecided.<sup>127</sup>

## 2. German Law.

Article 85 of the German Bills of Exchange Law reads as follows:

"The essential requirements of a bill of exchange drawn abroad, as well as all other contracts placed on such a bill, are to be decided according to the law of the place at which each of such contracts is made. If, however, the contracts placed abroad on the bill satisfy the requirements of the inland law, no objection can be taken against the legal liability incurred under contracts subsequently made within the Empire (inland) on the ground that the contracts made abroad do not satisfy the foreign law. Contracts on bills by which one German citizen becomes bound to another German citizen in a foreign country, are also valid although such contracts comply only with the requirements of the inland law."

It will be noticed that the German Bills of Exchange Law speaks of the *essential* requirements of bills and notes. From the standpoint of the German law of exchange, which is strictly formal, all essential requirements prescribed by the legislator are in reality *formal* requirements.

The *lex loci contractus* means the law of the place of execution; the law of the place of performance is of no importance.<sup>128</sup>

Two exceptions are made by the German Bills of Exchange Law to the application of the *lex loci contractus*, where the latter operates to invalidate the contract. No exception exists where the contract is valid under such law. The first exception provides that an acceptance or indorsement in Germany of a foreign bill or note which is void for want of compliance with the formal requirements of the law of the place of issue, is binding, provided such a bill or note complies with the requirements of the German law. Where the original instrument is invalid because of a non-compliance with the rules relating to formal execution, all accessory contracts placed thereon in Germany would, on principle, be invalid,<sup>129</sup> although both the original bill or note and the later contracts conformed to German law. This seemed intolerable. Hence an exception was made whereby the subsequent contracts in Germany which comply with German law are upheld, provided the foreign contracts are valid under the German law. The original contract itself and all subsequent contracts placed on the

<sup>126</sup> See Comm. Trib. Nice (May 22, 1912) 40 Clunet, 156; Bouteron, 224.

<sup>127</sup> See Vincent & Penaud, 345-346; 4 Weiss, 452-453.

<sup>128</sup> Staub, art. 85, n. 1.

<sup>129</sup> 1 Grünhut, 328; 1 Meyer, 142.

instrument outside of Germany are not within this exception, and are invalid unless they satisfy the *lex loci contractus*.<sup>130</sup> The exception being made with the object of giving greater security to local dealings affecting bills of exchange, it applies to Germans and foreigners alike.<sup>131</sup>

The second exception has reference only to German subjects. It lays down the rule that a contract between two German subjects entered into abroad shall be binding if it meets the requirements of the German law. Where a foreigner is a party to the original contract which does not conform to the *lex loci contractus*, the exception does not apply. In such a case a supervening contract between Germans, placed on the instrument abroad, would not be valid though it conformed to German law. The fact that the original instrument also satisfied German law would be of no consequence.<sup>132</sup> When the original contract is between Germans and complies with the German law, though not with the *lex loci contractus*, the instrument is valid. All supervening contracts, even between foreigners, will therefore be regarded as valid in Germany if they meet the requirements of the law of the place of contracting.<sup>133</sup>

Article 11 of the Introductory Act to the German Civil Code, paragraph 1, has the following general provision:

“The form of a legal transaction is controlled by the laws governing the relation which constitutes the subject of the transaction. However, compliance with the laws of the place where the transaction is entered into is sufficient.”

This article adopts the rule *locus regit actum* in a permissive sense, and sustains the contract, as regards formal requisites, if it satisfies the *lex loci contractus* or the law governing the contract in other respects, *i.e.*, the *lex loci solutionis* or the *lex domicilii*.<sup>134</sup> It seems, however, that the above provision, which went into effect on Jan. 1, 1900, is not applicable to bills and notes, and that the latter continue to be governed by the special provisions of article 85 of the General Exchange Act of 1849.<sup>135</sup>

<sup>130</sup> Bettelheim, 111.

<sup>131</sup> Bettelheim, 112; Minakuchi, 65.

<sup>132</sup> Bettelheim, 113; Minakuchi, 68.

<sup>133</sup> Bettelheim, 115; Minakuchi, 70. *Contra*: 2 Grünhut, 576, n. 23.

<sup>134</sup> The Supreme Court of the German Empire generally applies the law of the place of performance: (July 4, 1904) 15 Niemeyer, 285; but sometimes the law of the domicile of the debtor: (Oct. 12, 1905) 61 R G, 343.

<sup>135</sup> 2 Meili, 344; Minakuchi, 56; Staub, art. 85, n. 4-6. *Contra*: Bar, 1 Ehrenberg's *Handbuch*, 383-384.

### 3. *Italian Law.*

The Italian law is contained in article 58 of the Commercial Code, which reads as follows:

"The form and the essential requisites of commercial obligations . . . are governed, respectively, by the laws and usages of the place where the obligations are created . . . save in every case the exception laid down in article 9 of the Preliminary Dispositions of the Civil Code for those subject to the same national law."

Article 9, paragraph 1, of the Preliminary Dispositions of the Civil Code provides:

"The extrinsic forms of acts *inter vivos* . . . shall be determined by the laws of the place where they are done. The . . . contracting parties may choose, however, to follow the forms of their national law, provided the latter be common to all of the parties."<sup>136</sup>

## IV. LATIN-AMERICAN LAW.

### 1. *Convention of Montevideo.*

Article 26 of the Convention on Commercial Law concluded at the Congress of Montevideo controls. It provides as follows:

"The form of the drawing, indorsement, acceptance, and protest of a bill of exchange shall be subject to the law of the place in which these acts occur."

No qualification of the law of the place of contracting is recognized as to bills of exchange.<sup>137</sup>

### 2. *Argentine Law.*

The general provisions of the Argentine Law in the matter of formal requirements relating to bills and notes, apart from the rules of the Convention of Montevideo, are found in article 738 of the Commercial Code, which enacts as follows:

"Disputes at law referring to the essential requisites of bills of exchange, their presentation, acceptance, payment, protest and notification, shall be decided according to the commercial laws and customs of the places where those acts are done."<sup>138</sup>

"Nevertheless, if the statements made on a foreign bill of exchange are sufficient according to the laws of the Republic, the circumstance that they are defective according to foreign laws cannot give rise to defences against indorsements afterwards added in the Republic."

<sup>136</sup> A compliance with any law other than that of nationality,—with that of the place of performance, for example,—is not sufficient. 3 Diena, *Trattato*, 31.

<sup>137</sup> The Convention on International Civil Law concluded at the Congress of Montevideo accepts the rule *locus regit actum* as regards public instruments. Art. 39. But contracts which need not be executed in the form of public instruments are subject, in the matter of formal execution, to the law of the place of performance. Art. 32.

<sup>138</sup> The Civil Code also provides for the application of the *lex loci* to the formal execution of contracts. Art. 12 of the Civil Code. See also 1 Rivarola, 127.



As in the German act, the term "essential" requisites includes also the "formal" requisites of bills of exchange.

### 3. *Brazilian Law.*

The law of Brazil, so far as the formal execution of bills and notes is concerned, is stated in article 47 of the Bills of Exchange Act of 1908, which has the following provision:

"The substance, the effects, the extrinsic form, and the means of proof of an exchange obligation are regulated by the law of the place where the obligation was contracted."

### 4. *Chilean Law.*

There are no special rules relating to the formal execution of bills and notes in Chile. The general rules of the Civil Code therefore apply. These sanction the application of the *lex loci contractus*.<sup>139</sup>

## V. JAPANESE LAW.

Article 8 of the Law Concerning the Application of Laws in General has adopted the rules laid down by article 11 of the Introductory Act to the German Civil Code. Article 125 of the Introductory Act to the Japanese Commercial Code agrees in substance with article 85 of the German Bills of Exchange Law. As regards bills of exchange, the special provisions of the latter article control.<sup>140</sup>

## VI. CONVENTION OF THE HAGUE.

Article 75 of the Uniform Law lays down the following rule:

"The form of any contract entered into with respect to bills of exchange is regulated by the laws of the state within whose territory such contract has been signed."

## VII. DISCUSSION.

Two principal questions are suggested by the preceding comparative statement of the rules prevailing in the various countries.

*First.* Should the rule *locus regit actum* be adopted as the law governing the formal validity of bills and notes; and, if so, should that rule have an imperative or merely a permissive character?

*Second.* What exceptions, if any, should be recognized to this rule?

As regards the first question, there can be no doubt that the *lex loci contractus* is the controlling law. All of the modern legislative enact-

<sup>139</sup> Art. 17 of the Chilean Civil Code speaks only of public instruments as being subject to the local law in matters of form, but, in view of art. 16, par. 2, art. 119, and art. 1027 of the code, it is clear that the rule *locus regit actum* must be deemed to have a general application. See Errázuriz, 31; 1 Salas, 43-44.

<sup>140</sup> Minakuchi, 55-56.

ments and international conventions, and most of the judicial decisions admit this principle. In the United States alone there is some uncertainty regarding the application of the rule owing to the decision of the Supreme Court of the United States in *Hall v. Cordell*; but the weight of authority in this country agrees with the general rule already indicated. The *lex loci contractus* has been adopted by the Institute of International Law.<sup>141</sup> The text-writers are unanimously of the opinion that the *lex loci contractus* should govern.<sup>142</sup> The rule laid down by the Supreme Court of the United States in the *Scudder* case may be regarded, therefore, as the governing law by almost universal assent.

There is no agreement, however, either as regards the positive law, or as regards the opinions of jurists, as to whether or not the *lex loci contractus* should be considered an exclusive rule.

This conflict of opinion has largely a historical foundation. It is connected with the nature of the rule *locus regit actum* in the conflict of laws. In Roman law and in the earliest period of the development of the rules of the conflict of laws in the Middle Ages, it seems that the validity of a legal transaction, so far as its formal execution is concerned, was determined by the same law that governed its validity or legality in general.<sup>143</sup> The difficulty of complying with the formal requirements of a foreign law and the injustice that might result therefrom led Bartolus and his successors to advocate that a will be deemed sufficiently executed if it complied with the law of the place of execution. Through the influence of Bartolus the rule *locus regit actum*, which was extended later to other transactions, became established. Being introduced on grounds of convenience, the *lex loci contractus* did not supplant the original rule, and so it resulted that the rule *locus regit actum* had at first only a permissive effect. A legal transaction was valid, therefore, as to formal execution, if it satisfied the law of the place of execution, or the law governing its validity or legality in other respects.<sup>144</sup> In the course of time the rule lost its original character in some countries so as to become imperative; in others it remained an alternative rule, except in certain classes of cases.<sup>145</sup> In England and the United States the rule *locus regit actum*

<sup>141</sup> 8 Annuaire, 121.

<sup>142</sup> Asser, 207; Audinet, 609; Bar, 671; Champecommunal, 142; Chrétien, 72; Despagne, 987; 3 Diena, *Trattato*, 28; Esperson, 20; Field, art. 614; 2 Meili, 331; 4 Lyon-Caen & Renault, 545; Ottolenghi, 81; Valéry, 1279; 4 Weiss, 448-449.

<sup>143</sup> See Cod. VI, 23, 9, as to Roman law, and 2 Lainé, 333-357, concerning the later writers.

<sup>144</sup> See 2 Lainé, 395-413.

<sup>145</sup> See Buzzati, 13-49, 170-184; Niemeyer, *Vorschläge und Materialien*, 98-100.



was never accepted, except as to contracts, and with respect to them only in a mandatory form. In those countries which in modern times have pressed the claims of the national law, the rule is not infrequently stated as allowing a compliance with the *lex loci contractus* or the *lex patriae* which is common to the parties.<sup>146</sup>

In the law of bills and notes Italy has squarely adopted the rule *locus regit actum* in a permissive sense. Germany has accepted it to a limited degree, namely, when German subjects contract abroad. France, England, and the United States, on the other hand, prescribe the *lex loci contractus*, on principle, as an absolute rule.

As for the text-writers, those regarding the rule of *locus regit actum* in the conflict of laws as mandatory reject, of course, any alternative rule in the matter of the formal execution of negotiable instruments.<sup>147</sup> Those contending that the rule has retained its original permissive character as to ordinary transactions are divided in opinion upon the question whether an alternative provision is permissible in the law of bills and notes. Of those giving an affirmative answer, some apply as the alternative rule the common national law of the immediate parties.<sup>148</sup> Others regard the various contracts as unilateral obligations and therefore allow a compliance with the national law of the debtor.<sup>149</sup> Still others would allow the *lex patriae* as the alternative rule only when it coincides with the *lex loci solutionis*.<sup>150</sup> Many feel, on the other hand, that the formal character of the instrument and the security of transactions involving bills and notes do not admit of an alternative rule in the law of bills and notes.<sup>151</sup> Jitta proposes, as in the matter of capacity,<sup>152</sup> the law of the fiduciary place of issue, that is, the law of the place from which the instrument or the particular contract is dated, and, in the absence of such an indication, the *lex domicilii* or, when the party in question is engaged in business or exercises a profession, the law of the state in which he has his place of business or office.<sup>153</sup>

Is there a sufficient reason for the adoption of an alternative rule

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<sup>146</sup> Audinet, 270; 1 Fiore, 250-253; Pillet, 486; Surville & Arthuys, 721; 3 Weiss, 120.

<sup>147</sup> Asser, 66, 207; Buzzati, 152-154; Demangeat, in 1 Foelix, 184, n.; Field, art. 614; 2 Laurent, 445; 2 Vareilles-Sommières, 272.

<sup>148</sup> Audinet, 610; Surville & Arthuys, 721; 4 Weiss, 449.

<sup>149</sup> Bar, 671; Champcommunal, 145-146; Chrétien, 87; Esperson, 29.

<sup>150</sup> 1 Massé, 508.

<sup>151</sup> 3 Diena, *Trattato*, 28; 4 Lyon-Caen & Renault, 545, 549; 2 Meili, 331; Ottolenghi, 81, 89; Valéry, 1279; Villalbi, 401.

<sup>152</sup> See *ante*, pp. 71-72.

<sup>153</sup> 2 Jitta, 46.



as to the formal execution of bills and notes in a uniform act for the United States?

If an alternative rule is to be adopted, it cannot assume the form given it by the German and Italian law. The German law is unacceptable because of its discrimination between citizens and foreigners. The alternative rule adopted by the Italian law—the law of nationality common to the parties—cannot be approved, even if the *lex domicilii* be substituted for that of the *lex patriae*, for the reasons advanced in the discussion of alternative rules in connection with capacity. The only alternative rule which could reasonably be considered from the standpoint of American law is the *lex loci solutionis*. This mode of dealing with the problem has been actually proposed by Professor Despagnet<sup>154</sup> of the University of Bordeaux. Is it advisable to adopt this rule in the uniform act? Whatever doubts may have existed concerning the expediency of an alternative rule as to capacity, there should be none as to the formal validity of bills and notes. There are special objections which prohibit its adoption, even though it were to be sanctioned with respect to capacity and with respect to the formal validity of contracts in general.

In another place the author has expressed the opinion that an alternative rule allowing a contract to be valid, as regards formal execution, if it satisfies the requirements of the *lex loci contractus* or the law governing its validity in other respects, might be proper in jurisdictions where the *lex loci contractus* does not control the validity of contracts. But the following reservation was made covering the exact subject now under consideration:

“An exception should be made,” it is there stated, “with respect to commercial paper. The nature of the instrument is here essentially dependent upon its form. Absolute certainty in regard to its character is of the utmost importance. A fixed rule must therefore apply, which in the nature of things, is the law of the place of issue.”<sup>155</sup>

That there is a valid distinction between ordinary contracts and bills and notes appears most clearly from the German law. Article 11 of the Introductory Act to the Civil Code sustains a contract, so far as its formal validity is concerned, if it complies with the law of the place of making or with the law governing its validity or obligation in other respects, the latter being, according to the prevailing rule, the law of the place of performance. Yet, in the interest of security of dealings in commercial paper, this alternative provision does not extend to bills and notes, which are governed, with deliberate purpose,

<sup>154</sup> p. 988.

<sup>155</sup> (1911) 20 Yale Law Journal, 457-458.

by the *lex loci contractus*.<sup>156</sup> The exceptional importance attached to the form of bills and notes is also seen in the attitude taken on the question of alternative rules by the Institute of International Law<sup>157</sup> and the Convention of the Hague.<sup>158</sup> Both allow such an alternative rule as regards capacity, but deny it in the matter of the formal execution of bills and notes.

Whatever the merits of an alternative rule may be in general, it cannot, for the reasons above suggested, be adopted with respect to the formal requirements of bills and notes. At least in this branch of the law it would seem that the rule *locus regit actum* must have an imperative character.

Because of the special objections in the law of bills and notes to the adoption of an alternative rule as regards formalities, which are based upon the negotiable character of such instruments and the consequent requirements of certainty, there is no need of considering the provisions of the English Wills Act or the statutory provisions existing in many states of this country which have introduced, in the matter of wills and deeds, the continental rule *locus regit actum* in a permissive sense.

The foregoing discussion is applicable to the essential as well as to the formal requirements of bills and notes, for no clear line of demarcation between the two can be drawn. This is most apparent in countries belonging to the German group. They have adopted a formal exchange law according to which the rights of the parties are derived solely from the form of the instrument.<sup>159</sup> "The bill of exchange," says a noted Italian writer,<sup>160</sup> "being a literal<sup>161</sup> contract, its form no doubt influences the substance of the obligation." Article 85 of the German Exchange Law speaks accordingly only of the law governing the essential validity of the contract, the term including all formal requirements. In the countries that have not adopted the formal system of bills and notes after the German type,—in France, for example,—the impossibility of clearly distinguishing between form and substance is likewise admitted. Says Despagne:<sup>162</sup>

<sup>156</sup> See *ante*, p. 93. See also Staub, art. 85, notes 1-6.

<sup>157</sup> 8 *Annuaire*, 121.

<sup>158</sup> Art. 75, Uniform Law.

<sup>159</sup> See 2 Grünhut, 571-572, and n. 14.

<sup>160</sup> 3 Diena, *Trattato*, 28.

<sup>161</sup> "The literal contract of Roman Law," says Professor Sohm, "was a fictitious loan, which operated by virtue of the 'literae'—i.e. by virtue of the writing in the codex as such, irrespectively altogether of the facts actually underlying the relations between the parties—to impose on the debtor an abstract liability to pay a fixed sum of money." *Institutes* (Ledlie's transl. 2d ed.) 413.

<sup>162</sup> p. 988.



"Without doubt certain of these requisites may refer to matters of substance, as the '*remise de place en place*' and the indication of 'value received.' But they all constitute parts of the context of a bill of exchange, and by virtue of that fact become matters of form."

Other writers of authority call attention to the same fact.<sup>163</sup> Section 72, subdivision 1, of the Bills of Exchange Act uses the expression "requisites of form"; but these words are no doubt to be understood as including all essential requirements except those of capacity and consideration. In the Negotiable Instruments Law the essential requirements for the validity of a bill or note, apart from capacity and consideration, are found in the chapter entitled "Form and Interpretation." The word "form" therefore includes the essential requirements. The American cases dealing with the question from the standpoint of the conflict of laws appear to have assumed, however, that a distinction might be drawn between the formal and essential requisites, and that they might properly be subjected to different laws. While the requirement of a written form or of a stamp has been considered a matter of formal execution to be determined by the *lex loci contractus*, the statutory provision that a negotiable note must be payable at a bank<sup>164</sup> and the prohibition of a stipulation for attorneys' fees<sup>165</sup> have been classified as matters of substance and subjected to the law of the place of payment. In none of the cases was there any discussion of the problem involved. It is submitted that all of the conditions prescribed by law for the creation of a bill or note should be governed by one law—the *lex loci contractus*—and that the American decisions last referred to should be disapproved.

Concerning the meaning of the *lex loci contractus* and the importance of the place from which the original instrument or a supervening contract is dated, see the discussion of "capacity."<sup>166</sup>

We come now to the second of the two principal questions put above.<sup>167</sup> Should any exceptions to the applicability of the *lex loci contractus* be recognized after the manner of those in the Bills of Exchange Act or the German Exchange Law?

Assuming that the original bill or note is void for want of compliance with the formal or essential requirements prescribed by the law of the place of issue, and that such a bill or note is later accepted or indorsed in another country under whose law the original bill or note

<sup>163</sup> 2 Brocher, 318; Ottolenghi, 81; 4 Weiss, 451.

<sup>164</sup> *Barger v. Farnham* (1902) 130 Mich. 487, 90 N. W. 281; *Freeman's Bank v. Ruckman* (1860, Va.) 16 Gratt. 126.

<sup>165</sup> *Strawberry Point Bank v. Lee* (1898) 117 Mich. 122, 75 N. W. 444.

<sup>166</sup> *Ante*, pp. 83-85.

<sup>167</sup> *Ante*, p. 95.



would have been valid, should such acceptor or indorser be held liable? The English Bills of Exchange Act and the German Bills of Exchange Law give an affirmative answer to the question. Much controversy has arisen on the continent whether the result of the German and English acts can be reached without the aid of positive legislation. On the one hand it is argued that, inasmuch as the different contracts on a bill or note are independent of each other—each indorser occupying, as it were, the position of a new drawer and the acceptor that of the maker of a note—they should be held if the original instrument satisfies the requirements of the law of the place where the acceptance or the indorsement is made.<sup>168</sup> The weakness of this argument from the standpoint of continental law lies in the fact that according to the exclusively local law of bills and notes of many of the continental countries, neither the acceptor nor the indorser of a bill or note which is void for non-compliance with the formal requisites prescribed by law can be held.<sup>169</sup> If such an acceptor or indorser is not liable under the exclusively local law for the reason that an "acceptance" or an "indorsement" implies the existence of a valid original bill or note, it is difficult upon theory to hold him, from an international point of view, in the case now under consideration.

Bar's argument is not convincing. He says:<sup>170</sup>

"But again, on the other hand, the acceptance or the indorsement of a bill made in this country is valid, so far as form is concerned, although the bill itself does not satisfy the forms required by the law of the place of issue, if only it does satisfy the conditions required by the law of this country. For the acceptor binds himself unconditionally for payment of the sum in the bill, and the indorser binds himself in the event of the acceptor's failure to pay; that being so, we cannot, on the one hand, take into account the fact that the debtor may or may not have a right of recourse or of indemnity, nor can we take into account the reason why the prior obligant does not pay, and that reason may be that the principal debtor in the bill has not validly bound himself."

The simple answer to Bar is that in a country under whose exclusively local law neither the acceptor nor the indorser warrants the formal validity of the instrument, there is no justification for implying such a warranty when the original instrument is issued abroad.

The solution is somewhat different under Anglo-American law. An indorser warrants that at the time of indorsement the instrument is

<sup>168</sup> Bar, 673; Beauchet, 29-30; Champcommunal, 147; Chrétien, 101-102; Esperson, 31-33; 4 Lyon-Caen & Renault, 550.

<sup>169</sup> Art. 7, German Bills of Exchange Law; art. 725, Swiss Law of Obligations; art. 254, Italian Commercial Code.

<sup>170</sup> p. 673.

a valid and subsisting bill or note.<sup>171</sup> This warranty would cover the invalidity of the original instrument as a bill or note under a foreign law because of non-compliance with the formal requirements of the *lex loci contractus*. As a person is not chargeable with knowledge of foreign law the indorsee would not have constructive notice of the invalidity of the instrument, although the defect appeared upon the face of the bill or note itself.

An acceptor admits only the signature of the drawer and not the validity of the instrument in other respects.<sup>172</sup> Anglo-American law goes upon the theory that an acceptor has no better means than the holder or indorser to ascertain the genuineness of the body of the instrument. No reason exists therefore why the risk of alteration or forgery should not be thrown upon the person presenting the instrument for acceptance or payment. The same reasoning applies on principle where the invalidity results from a non-compliance with the law of the place of issue. Although an acceptor cannot be held in the above case upon the ordinary principles of Anglo-American law relating to negotiable paper, and although, according to the German law of bills and notes, neither an indorser nor an acceptor can be so held, the English and German acts impose liability upon both of these parties. The English act provides:<sup>173</sup>

"Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom."

This provision relates only to the original contract, since it speaks of bills *issued* out of the United Kingdom; but there is no reason why it should not apply as well to the supervening contracts. The German act, which embraces clearly all contracts upon a bill or note issued abroad, is worded as follows:<sup>174</sup>

"If, however, the statements inserted abroad on the bill satisfy the requirements of the inland law, no objection can be taken against the legal liability incurred by statements subsequently made within the empire (inland) on the ground that statements made abroad do not satisfy the foreign laws."

Undoubtedly the above qualification to the ordinary rules of commercial paper was adopted in the interest of a local policy whose purpose is the better protection of "inland" dealings in bills and

<sup>171</sup> N. I. L. sec. 66; B. E. A. sec. 55 (2).

<sup>172</sup> N. I. L. sec. 62; B. E. A. sec. 54 (2) (a).

<sup>173</sup> B. E. A. sec. 72 (1) (b).

<sup>174</sup> Art. 85.



notes. Such legislation, while arbitrary in the sense that it does not harmonize with the exclusively local law relating to bills and notes, may be justified if in keeping with sound policy. The author is of the opinion that inasmuch as the security of domestic dealings affecting such foreign bills and notes is thereby promoted, the exception under discussion might be adopted with advantage even in a country where, as in Germany, neither the acceptor nor the indorser warrants the validity of the instrument. He would, therefore, recommend for adoption in the uniform law for the United States, section 72, subdivision (1) (b) of the English Bills of Exchange Act, with a change in the phraseology showing clearly that it applies to the supervening contracts as well as to the original instrument.

As for the second exception to the *lex loci contractus* contained in the English Bills of Exchange Act, a different conclusion must be reached. Section 72, (1) (a) provides that:

"Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue."

Some of the American cases,<sup>175</sup> as we have seen, support the provision on the ground that foreign revenue laws are not entitled to recognition. The better opinion, both in England and in this country, would give effect to such laws, provided their violation results in the invalidity of the contract.<sup>176</sup> The cases holding that the foreign stamp laws are local or intraterritorial because fiscal in their nature, and not entitled therefore to extraterritorial recognition, have been condemned by the great majority of text-writers, both continental and Anglo-American.<sup>177</sup>

<sup>175</sup> *Ludlow v. Van Rensselaer* (1806, N. Y.) 1 Johns. 94; *Skinner v. Tinker* (1861, N. Y.) 34 Barb. 333.

<sup>176</sup> *Bristow v. Sequeville* (1850) 5 Ex. 275; *Alves v. Hodgson* (1797) 7 T. R. 241; *Clegg v. Levy* (1811) 3 Campb. 166; *Fant v. Miller* (1866, Va.) 17 Gratt. 47; *Satterthwaite v. Doughty* (1853) 34 N. C. 314.

<sup>177</sup> Bar, 672; Chrétien, 93; 3 Dena, *Trattato*, 14; Despagnet, 1000-1001; 2 Grünhut, 571, n. 12; Schäffner, 120; 2 Jitta, 49; 4 Lyon-Caen & Renault, 552; Ottolenghi, 100; Surville & Arthuys, 696; Villalbi, 403; 4 Weiss, 453.

Chalmers, 242; Daniel, sec. 914; Story, 346.

*Contra*: Brocher, 6 *Revue de droit international*, 199-200; Champecommunal, 292; 2 Meyer, 372.

Dr. Meyer concedes that on theory the *lex loci* should be followed, but he agrees with Abbott, C. J., in *James v. Catherwood* (1823) 3 D. & R. 190, 191, that "it would be productive of prodigious inconvenience, if in every case in which an instrument was executed in a foreign country, we were to receive in evidence, what the law of that country was, in order to ascertain whether the instrument was or was not valid."



## CHAPTER III: OBLIGATION<sup>178</sup>

### I. GENERAL QUESTIONS

#### 1. THE GOVERNING LAW.

##### A. ANGLO-AMERICAN LAW.

##### (1) *English Law.*

Section 72 (2) of the Bills of Exchange Act provides as follows:

"Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill, is determined by the law of the place where such contract is made."

Chalmers<sup>179</sup> gives the following explanation of the above provision:

"The term 'interpretation,' in this subsection, it is submitted, clearly includes the obligations of the parties as deduced from such interpretation.

"Story, §154, points out the reasons of the rule adopted in this subsection. 'It has sometimes been suggested,' he says, 'that this doctrine is a departure from the rule that the law of the place of payment is to govern. But, correctly considered, it is entirely in conformity with that rule. The drawer and indorsers do not contract to pay the money in the foreign place on which the bill is drawn, but only to guarantee its acceptance and payment in that place by the drawee; and in default of such payment, they agree upon due notice to reimburse the holder in principal and damages where they respectively entered into the contract.'

"The case of a bill accepted in one country but payable in another gives rise to a difficulty. Suppose a bill is accepted in France, payable in England. Perhaps the maxim, *Contraxisse unusquisque in eo loco intelligitur in quo ut solveret se obligavit*, would apply. But if not, then comes the question, what is the French law, not as to bills accepted and payable in France, but as to bills accepted in France payable in England? Probably the *lex loci solutionis* would be regarded: *Cf. Nougier, §1419.*"

Dicey makes the following comment:<sup>180</sup>

"It is therefore doubtful whether, when a bill is accepted in one country, *e.g.*, England, and made payable in another, *e.g.*, France,

<sup>178</sup> The term "obligation" is used here in its narrower sense and excludes questions relating to capacity and to formal and essential validity.

<sup>179</sup> p. 244.

<sup>180</sup> pp. 593-594.

the obligations of the acceptor are governed, as the words of the section strictly taken imply, by the law of the country where the bill is accepted (*lex loci contractus*), or, as they ought to be on principle, by the law of the country where the bill is made payable (*lex loci solutionis*).

"The probable explanation of this difficulty is curious. Story's expressions have apparently suggested the terms of subsection 2. Story's language may be read, and probably was read by the persons engaged in considering the bill, as meaning that the obligations of the parties to a bill are governed by the law of the place where each party contracts. But this is not his real meaning; he clearly intends to lay down, though in a very roundabout way, that each contract embodied in a bill is to be interpreted by the law of the country where it is to be performed (*lex loci solutionis*). Unfortunately the language of subsect. (2) reproduces the words rather than the meaning of Story. The result is, that if the terms of the subsection be strictly interpreted, the obligations of an acceptor are to be governed, not, as Story intended, by the *lex loci solutionis*, but by the *lex loci contractus*. Mr. Chalmers' suggestion to a certain extent meets the objections to this result, but it may be doubted whether his suggestion is not in conformity rather with the doctrine of Story, when properly understood, than with the language of the Bills of Exchange Act, 1882, s. 72, subs. (2)."

## (2) *American Law.*

The great weight of American authority is to the effect that the liability of the parties and the defences available to them, are governed by the law of the place where the bill or note is payable, and not by the law of the place of issue.<sup>181</sup> A few courts apply the *lex loci contractus*<sup>182</sup> or the intention theory.<sup>183</sup>

## B. CONTINENTAL LAW.

### (1) *French Law.*

The intention of the parties governs. Where the intention is not expressed, the law presumes that the parties contracted with reference to the *lex loci contractus*.<sup>184</sup>

<sup>181</sup> *Brabston v. Gibson* (1850, U. S.) 9 How. 263, 13 L. E. 131; *Mason v. Dousay* (1864) 35 Ill. 424; *Smith v. Blatchford* (1850) 2 Ind. 184, 52 Am. Dec. 504; *Hunt v. Standart* (1860) 15 Ind. 33, 77 Am. Dec. 79; *Rose v. Park Bank* (1863) 20 Ind. 94, 83 Am. Dec. 306; *Strawberry Point Bank v. Lee* (1898) 117 Mich. 122, 75 N. W. 444; *Barger v. Farnham* (1902) 130 Mich. 487, 90 N. W. 281; *Emanuel v. White* (1857) 34 Miss. 56, 69 Am. Dec. 385; *Emerson v. Patridge* (1854) 27 Vt. 8, 62 Am. Dec. 617; *Freeman's Bank v. Ruckman* (1860, Va.) 16 Gratt. 126.

<sup>182</sup> *Howenstein v. Barnes* (1879, U. S. C. C.) 5 Dill. 482, Fed. Cas. No. 6786.

<sup>183</sup> *Mayer v. Roach* (1909) 77 N. J. L. 681, 75 Atl. 235; *Basilea and Calandra v. Spagnuola* (1910) 80 N. J. L. 88, 77 Atl. 531.

<sup>184</sup> Cass. (Feb. 6, 1900) S. 1900, 1, 161, and note.

(2) *German Law.*

The intention of the parties is the controlling law. In the absence of evidence of such an intention the parties will be deemed to have contracted with reference to the law of the place of performance.<sup>185</sup>

(3) *Italian Law.*

Article 58 of the Commercial Code provides as follows:

"The form and essential requisites of commercial obligations, the form of the acts that are necessary for the exercise and preservation of the rights arising from such obligations or from their performance, and the effect of the acts themselves, are governed, respectively, by the laws and usages of the place where the obligations are created and where said acts are done or performed, save in every case the exception laid down in article 9 of the Preliminary Dispositions of the Civil Code with respect to those subject to the same national law."

Article 9, paragraph 3, of the Preliminary Dispositions of the Civil Code has the following wording:

"The substance and effect of obligations are deemed to be regulated by the law of the place in which the acts were done, and, if the contracting parties are foreigners and belong to the same nationality, by their national law. The showing of a different intent is reserved in each case."

Article 58 of the Commercial Code has given rise to much controversy with reference to the present question. Does it intend to lay down the *lex loci contractus* as a rule of law, except where the parties have the same nationality, or is it intended merely as an expression of the presumptive intention of the parties in the absence of other evidence? The better view appears to be that the Italian legislator did not intend to exclude the principle of the autonomy of the will in the law of obligations. The intention of the parties is to be regarded, therefore, as determining the law governing the obligations of the parties. Where the parties are of the same nationality they will be deemed to have contracted with reference to their national law. Where they are of different nationality, they will be presumed, in the absence of evidence showing a contrary intention, to have had in mind the law of the place of execution.<sup>186</sup>

## C. LATIN-AMERICAN LAW.

(1) *Convention of Montevideo.*

The Convention on Commercial Law concluded at the Congress of Montevideo contains the following specific provisions:

Art. 27. "The legal relations resulting from the drawing of a bill

<sup>185</sup> (Jan. 17, 1882) 6 R G, 24.

<sup>186</sup> 1 Diena, *Trattato*, 73-79; Ottolenghi, 131-138.



of exchange shall be governed as between the drawer and the payee by the law of the place of issue; those resulting as between the drawer and the drawee shall be governed by the law of the domicile of the drawee.

Art. 28. "The obligation of the acceptor in respect of the holder and the defences which he may have, shall be governed by the law of the place where the acceptance took place.

Art. 29. "The legal effects resulting from the indorsement as between the indorser and the indorsee shall depend upon the law of the place where the bill has been negotiated or indorsed."

The above constitute special provisions applicable to bills of exchange. As regards contracts in general the Convention on International Civil Law concluded at the Congress of Montevideo provides that the law of the place of performance shall govern the validity, obligation, effect, and performance of contracts.<sup>187</sup>

### (2) *Argentine Law.*

The general rules governing the obligation of contracts are found in articles 1239, 1244, and 1248 of the Civil Code. Article 1239 provides that the law of the place of contracting shall control the validity, nature, and obligation of contracts, but it appears from articles 1244 and 1248 that the law of the place of performance is to govern in this regard whenever the contract is to be performed in a place other than that of the place of execution.<sup>188</sup> Bills and notes are subject, however, to the special rule laid down in article 738 of the Commercial Code:

"Disputes at law referring to the essential requisites of bills of exchange, their presentation, acceptance, payment, protest, and notification, shall be decided according to the commercial laws and customs of the place where those acts are done."

### (3) *Brazilian Law.*

The Civil Code of Brazil has the following general provisions on the subject:

Art. 13. "The substance and effects of obligations shall be regulated, in the absence of a stipulation to the contrary, by the law of the place where they were entered into.

"But Brazilian law shall govern:

"I. Contracts entered into in foreign countries which are to be performed in Brazil;

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<sup>187</sup> Art. 33 of the Convention on International Civil Law provides that the law of the place of performance shall govern contracts as regards "(a) their creation, (b) their nature, (c) their validity, (d) their effects, (e) their consequences, (f) their performance, (g) in brief, all matters concerning contracts, whatever their nature."

<sup>188</sup> See Molina, 183; 3 Alcorta, 233; 1 Rivarola, 127.

"II. Obligations contracted in a foreign country between Brazilians."

Bills of exchange are controlled, however, by the special provisions contained in article 47 of the new Bills of Exchange Law, which applies the law of the place of execution to the determination of the nature and effect of exchange obligations.

(4) *Chilean Law.*

The law of the place of execution determines the obligations arising from contracts but the effect of contracts to be performed in Chile is subject to Chilean law.<sup>189</sup> There are no special provisions relating to bills and notes.

D. JAPANESE LAW.

Article 7 of the Law Concerning the Application of Laws in General provides as follows:

"The law governing the creation and effect of a legal transaction is determined by the will of the parties.

"If the will of the parties is not clear the law of the place where the transaction was entered into shall control."<sup>190</sup>

E. DISCUSSION.

Which of the preceding rules represents the better view?

As the question before us relates to the obligation of the contract, as distinguished from its validity, the governing principle recognized in all countries is that the intention of the parties is, in the last analysis, the controlling factor. In the law of bills and notes, however, such an intention is but rarely expressed directly; and usually it cannot be definitely gathered from the surrounding circumstances. To promote the certainty and security of commercial dealings involving negotiable paper, it is necessary, therefore, for the courts or legislatures to lay down certain presumptions which shall fill in the gap. These presumptions, except so far as they must yield to considerations of policy, should represent the law which the parties, acting as reasonable men, would probably have chosen as the governing law had their attention been directed to the matter.

On behalf of the *lex patriae* it is said that the contracting parties are generally familiar with their national law, while they are ordinarily ignorant of the law of the place where they may happen to make the contract. Where they have a common nationality it is, therefore, deemed fair to presume that they had the *lex patriae* in mind.<sup>191</sup>

<sup>189</sup> Art. 16, Civil Code, pars. 2 and 3. See also Fabrès, 140; 1 Salas, 45.

<sup>190</sup> De Becker, 447; Minakuchi, 82, 86, and notes.

<sup>191</sup> Audinet, 611; Chrétien, 104-105; Champcommunal, 149; Despagne, 989;

Against this presumption it may be urged, even from a continental standpoint, that the law of obligations, unlike the family law, does not express national peculiarities based upon racial characteristics or local physical conditions. As the question has to do with business, the parties would naturally be more apt to know the law of their domicile than their *lex patriae*.

Some authors—Pillet,<sup>192</sup> for example,—have realized the force of the above objection against the *lex patriae*. They contend that the *lex domicilii*, if common to both parties, best expresses their presumptive intention. This presumption may best express the probable intention of the parties in the older countries, but it cannot be adopted in a country like the United States, where the population is migratory. The criterion of domicile under the conditions prevailing in this country would present too many difficult issues of fact to make it a practical standard for the defining of legal rights, particularly in the law of negotiable paper where certainty is a paramount consideration. This objection applies equally to Bar's<sup>193</sup> theory, which supports the *lex domicilii* of the debtor.

There remain the *lex loci contractus* and the *lex loci solutionis*. Which of these rules should determine the obligation of the parties to a bill or note?

We have seen that the great weight of authority in this country, and the German courts favor the law of the place of performance; while the other countries adopt, generally speaking, the law of the place where the contract is made. It seems, however, that the provisions of the English act resulted from a misunderstanding of Story's views which clearly support the *lex loci solutionis*.<sup>194</sup> In view of this conflict in the positive law, it will be necessary to look into the theories upon which the conflicting views rest.

The chief supporters of the *lex loci solutionis* in general are Story

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1 Foelix, 243; 7 Laurent, 518-519; 1 Rolin, 509; Surville & Arthuys, 298-299, 723; 4 Weiss, 357, 458.

<sup>192</sup> Pillet, *Principes*, 441; *Cours*, 325; 20 *Annuaire*, 153.

<sup>193</sup> pp. 443-446.

The most recent Norwegian authors appear to have also adopted the law of the debtor's domicile. Synnestvedt, 261.

While it is impossible to accept Bar's reasoning in general, it must be admitted that there is a scientific basis for the adoption of the *lex domicilii* of the debtor with respect to unilateral obligations. From a theoretical standpoint, therefore, this rule might be applied to bills and notes in jurisdictions where the contracts of the different parties are regarded as creating unilateral obligations.

<sup>194</sup> See Dicey, 593-594, *ante*, p. 104.



and Savigny. Savigny's argument in favor of the law of the place of performance is put by him in the following form:<sup>195</sup>

"In every obligation, then, we find principally and uniformly two visible phenomena which we might take as our guides. Every obligation arises out of visible facts; every obligation is also fulfilled by visible facts; both of these must happen at one place or another. We can, therefore, select either the place where the obligation has originated, or the place where it is fulfilled, as determining its seat and its forum,—either the beginning or the end of the obligation. To which of the two points shall we give the preference upon general principles?

"Not to the origin. This is in itself accidental, transitory, foreign to the substance of the obligation and to its further development and efficacy. If in the eyes of the parties a permanent influence reaching into the future were to be ascribed to the place where the obligation arose, this certainly could not flow from the mere constituent act, but only from the connection of that act, with extrinsic circumstances, by which a definite expectation of the parties was directed to that place.

"The case is different with respect to the fulfillment, which is indeed the very essence of the obligation. For the obligation consists just in this, that something which was previously in the free choice of a person is now changed into something necessary,—that which was hitherto uncertain, into a certainty; and when this necessary and certain thing has come to pass, that is just the fulfillment. To this, therefore, the whole expectation of the parties is directed; and it is therefore part of the essence of the obligation that the place of fulfillment is conceived as the seat of the obligation, that the special forum of the obligation is fixed at this place by voluntary submission."

This view has found many adherents, particularly in Germany, where it has been adopted by the *Reichsoberhandelsgericht*<sup>196</sup> and the *Reichsgericht*<sup>197</sup> and was approved, in 1897, at the twenty-fourth session of the German *Juristentag*.<sup>198</sup> Bar<sup>199</sup> advances the following argument against the position taken by Savigny:

"In support of this view, it is pleaded that performance is the end and object of the obligation to which the whole view of the parties is directed. This does not by itself, however, justify the subjection of the obligation exclusively to the law recognised at the place of performance. All that one can infer is, that in points dependent upon the agreement of parties, there is foundation for inferring a voluntary subjection to the law of the place of performance, by virtue of that

<sup>195</sup> pp. 198-199.

<sup>196</sup> See Bar, 541, n.

<sup>197</sup> R G (May 10, 1884) 13 Clunet, 609; (Mar. 22, 1901) 31 Clunet, 960; (June 16, 1903) 55 R G, 105; (July 4, 1905) 15 Niemeyer, 285; (Apr. 26, 1907) 18 Niemeyer, 177.

<sup>198</sup> *Verhandlungen des 24. deutschen Juristentages*, IV, 127.

<sup>199</sup> pp. 541-542.

expectation of parties which is directed to that end; while the law of obligations consists to a large extent, although not exclusively, of rules which may be avoided at the pleasure of parties. But even with this limitation, it is impossible, without a revolt against the general logical rules for interpreting the intention of parties, to carry out the theory of the rule of the place of performance in regard to obligations. For even if we leave out of account that, as the parties often know nothing of the law of the place of performance, and as it is often very difficult to say what is the place of performance in this sense, we cannot assume any voluntary subjection of the parties to the law of that place, an alteration in the place of performance made subsequently to the conclusion of the contract must alter the contract in each and every point, if the law of the new place of performance differs from that of the old; and if there are several places of fulfilment, we are at a loss for any rule of interpretation."

This quotation summarizes briefly the arguments against the *lex loci solutionis*. From the mere fact that the debtor may have to be sued at his residence, the courts of which have jurisdiction, certainly no deduction regarding the presumptive intention of the parties can be made. Great difficulties might arise, as regards ordinary contracts, in the determination of the place of performance when the parties have not indicated it.<sup>200</sup> In the words of Professor Niemeyer,<sup>201</sup> the rule proposed by Savigny would introduce "a complicated legal concept, the criteria of which presuppose again a definite law." In bilateral contracts, obligations may arise on both sides, and the places of performance may be in different jurisdictions. In these cases we might be confronted with the strange spectacle of having the mutual obligations arising out of a single contract controlled by conflicting laws. How are we to look at the obligation of one of the parties separately from that of the other, when one obligation constitutes the condition of the other? Yet this is the precise thing that the German courts have been forced to do in following Savigny's theory in the above class of cases.<sup>202</sup>

Story considers the application of the *lex loci solutionis* as "the

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<sup>200</sup> See Story, secs. 282 *et seq.*; Wharton, 867-871, 877-883; Minor, 377-382, 388-400. "But although the general rule is so well established," says Story, "the application of it in many cases is not unattended with difficulties; for it is often a matter of serious question, in cases of a mixed nature, which rule ought to prevail, the law of the place where the contract is made, or that of the place where it is to be performed. In general it may be said that if no place of performance is stated, or the contract may indifferently be performed anywhere, it ought to be referred to the *lex loci contractus*. But there are many cases where this rule will not be a sufficient guide." Sec. 282.

<sup>201</sup> *Vorschläge und Materialien*, 241.

<sup>202</sup> (Oct. 13, 1894) 34 R G, 191; (Apr. 28, 1900) 46 R G, 193; (Apr. 21, 1902) 51 R G, 218; (June 16, 1903) 55 R G, 105; R G (Apr. 26, 1907) 18 Niemeyer, 177.



result of natural justice.”<sup>203</sup> In support of this conclusion he relies upon two passages from the Roman law, upon statements of some of the older authors, and upon the decisions of English and American courts. Let us inquire into these authorities in order to determine to what weight they are entitled.

Story asserts, first of all, that the Roman law adopted the *lex loci solutionis* as a maxim. He quotes the two passages from the *Digest* of the *Corpus juris civilis* which follow:<sup>204</sup>

“*Contraxisse unusquisque in eo loco intelligitur, in quo ut solveret, se obligavit,*” and “*Contractum autem non utique eo loco intelligitur, quo negotium gestum sit; sed quo solvenda est pecunia.*”

In regard to these quotations, it may be said that they do not establish the proposition in support of which they are cited. In the first place, there are other passages in the *Corpus juris*, equally explicit, which appear to support the *lex loci contractus*. For example:

“*Si fundus venierit, ex consuetudine ejus regionis in qua negotium gestum est pro evictione caveri oportet*,”<sup>205</sup> and “*Uniuscujusque enim contractus initium spectandum et causam.*”<sup>206</sup>

Fiore<sup>207</sup> attempts to reconcile these four passages from the Roman law by suggesting that the last two refer to the *vinculum juris* of the contract; while the former two—those which were cited by Story—govern merely the mode of performance.

In the second place, it is doubtful whether the passages quoted by Story have any bearing whatever upon the question before us, for they may refer merely to the forum, that is, to the place where suit may be brought, and not to the law governing the contract as such.

Says Bar:<sup>208</sup>

“An appeal is made to the fact that by Roman law the *forum contractus* was set up in the place where the obligation was to be performed, and Savigny especially tries to make out that the local jurisdiction, as well as the local law of the obligation, depends upon a voluntary submission of the parties, and therefore that the rules which regulate the former are to be applied also to the latter. But, in the first place, the Romans, in determining the jurisdiction, had no intention of laying down what the law of the obligation was to be. Further, by Roman law the *forum contractus* was not exclusive, but concurrent with the *forum domicilii* of the debtor. This could not be the case if the Roman law had conceived the place of performance

<sup>203</sup> p. 380.

<sup>204</sup> p. 376.

<sup>205</sup> Dig. XXI, 2, 6.

<sup>206</sup> Dig. XVII, 1, 8, pr.

<sup>207</sup> Vol. 1, p. 160.

<sup>208</sup> p. 543.



to be the seat of the obligation. In the third place, it is at variance with the general principles adopted by Savigny himself, and by far the greater number of authorities, to conclude from the competency of a court that the law recognised at its seat is uniformly applicable. By a similar deduction, we should hold that the law recognised at the seat of the court which had to decide any case must rule the case in all its bearings. Lastly, we shall show (see our discussion of jurisdiction) that it is not by any means the case that the Roman law unconditionally set up the *forum contractus* in the place where the obligation was to be performed."

Wächter,<sup>209</sup> one of the leading authorities on Roman law, expresses himself more fully in regard to the passages from the Roman law cited by Savigny.

"It is certain," he says, "that so far as a legal transaction is subject to the will of the parties, it must be assumed in case of doubt that they wish the law of the place where the transaction took place to be applied, *quo actum est, quo negotium gestum est*. In the matters which are subject to the control of the parties, the rule *locus regit actum* governs therefore in case of doubt. However, a meaning is ordinarily given to this principle of the Roman law which appears not to be the correct one.

"It is commonly asserted, at least by the more recent [German] writers, that in case the parties have agreed upon a place of payment, the law of that place should control, as it constitutes in effect the *locus contractus*. They cite in support, D. XLIV. 7 de O. et A. 1. 21, XLII 5. *de reb. auct. jud.* 1, 3. These passages say, it is true, that the place of payment agreed upon is deemed legally the *locus contractus*. But they say this solely with respect to the creation of the *forum contractus*, in regard to which the agreement is naturally of importance, and by no means as regards the interpretation of the will of the parties and the supplementing of what the parties left uncertain. Indeed, on this very point a contrast is made with the place of payment. The will of the parties shall be supplemented by the law of the place in which the *negotium gestum est*; but as regards the *forum contractus*, the *locus contractus* shall be deemed not the place *quo negotium gestum est, sed quo solvenda pecunia est*."

Many other writers agree with Bar and Wächter, and hold that Savigny and Story have given too broad a meaning to the Latin texts quoted.

In the light of the above considerations, Story's assertion that the law of the place of performance is supported by the Roman law must be said to rest upon a questionable foundation.

As already indicated, Story relies not only on the Roman law texts, but also on the older authors. He quotes from Paul Voet, Huber and Everhardus, though he admits that John à Sande maintained that the

<sup>209</sup> pp. 42-43.

law of the place where the contract was made should govern. He says:<sup>210</sup>

“Paul Voet has laid down the same rule. *‘Hinc, ratione effectus et complimenti ipsius contractus, spectatur ille locus, in quem destinata est solutio: id, quod ad modum, mensuram, usuras, etc., negligentiam, et moram post contractum initum accedentem referendum est.’* He puts the question: *‘Quid si in specie, de nummorum aut reddituum solutione difficultas incidat, si forte valor sit immutatus, an spectabitur loci valor, ubi contractus erat celebratus, an loci, in quem destinata erat solutio. Respondeo; ex generali regula, spectandum esse loci statutum, in quem destinata erat solutio.’* So that, according to him, if a contract is for money or goods, the value is to be ascertained at the place of performance, and not at the place where the contract is made. And the same rule applies to the weight or measure of things, if there be a diversity in different places. Everhardus accepts the same doctrine. *‘Quod, aestimatio rei debitae consideratur secundum locum ubi destinata est solutio, seu deliberatio, non obstante quod contractus alibi sit celebratus. Ut videlicet inspiciatur valor monetarum, qui est in loco destinatae solutionis.’* Huberus adopts the same exposition. *‘Verum tamen non ita praecise respiciendus est locus, in quo contractus est initus, ut si partes alium in contrahendo locum respexerint, ille non potius sit considerandus.’* Indeed, it has the general consent of foreign jurists; although to this, as to most other doctrines, there are to be found exceptions in the opinions of some distinguished names.”

Is Story correct in saying that the *lex loci solutionis* “has the general consent of foreign jurists”?

It is noteworthy, in the first place, that Story quotes only from Dutch authors. No reference is made to Italian writers. Of the French writers on the subject of conflict of laws, Boullenois alone is cited in a note, and of the German writers, only Hertius.

The Italian school of jurists, following Bartolus, the founder of the science of the conflict of laws, regarded the law of the place of making as the law governing the obligation of contracts. In his classic work, *Introduction au droit international privé*, published in 1888 and 1892, Professor Lainé makes the following statement concerning Bartolus’ view on the subject.<sup>211</sup>

“As far as the substance itself of the litigation is concerned (*ipsius litis decisio*), a distinction must be made. The point in question may relate either to the natural consequences of the contract, to the consequences which inhere in the contract from its inception (*aut quaeris de his quae oriuntur secundum ipsius contractus naturam tempore contractus*); in this case the *lex loci contractus* governs, and by the *lex loci contractus* must be understood the place where the contract is made and not the place where it is to be performed. Or the question

<sup>210</sup> pp. 377-380.

<sup>211</sup> Vol. 1, pp. 135-136.



relates to the consequences which arise subsequent to the formation of the contract as the result of negligence or default (*aut de his quae oriuntur ex postfacto propter negligentiam aut moram*); in that event the law of the place indicated for the performance of the contract must govern, or if nothing has been specified in this regard, the law of the forum; for it is there that the negligence or default has occurred."

The views of Bartolus appear to have prevailed until Dumoulin advanced his theory that the express or tacit intention of the parties should determine the governing law. Contrasting this view with that of Bartolus, Lainé states:<sup>212</sup>

"The contracts are . . . the object of two entirely different systems, that of Bartolus and that of Dumoulin. Bartolus submits the contract to the law of the place where it is executed, at least as to its direct effects,—to the consequences which inhere in it from the beginning; and the majority of authors after him regard the contract as formed in the place where it is made, and not where it is to be performed. Bartolus admits, moreover, that as regards the indirect and accidental effects, that is, the consequences which have happened through the negligence or default of the party obligated, the law applicable is that of the place designated for the performance of the contract, or the law of the place where the action is brought. . . . Dumoulin starts from the idea that in the matter of contracts the will of the parties governs; he then lays down the principle that if the intention of the parties has not been expressed, it must be derived from the circumstances under which the contract has been executed. In his opinion the *lex loci contractus* is only one of the attendant circumstances. . . . Moreover, he does not distinguish between the direct effects and the indirect consequences of a contract."

The French writers since Dumoulin have followed, generally speaking, in the footsteps of that celebrated author. This is especially true of the modern writers, who, almost without exception, support the *lex loci contractus* as against the *lex loci solutionis*. Of the writers of the eighteenth century Boullenois<sup>213</sup> and Pothier<sup>214</sup> appear to have

<sup>212</sup> Vol. 1, pp. 255-256.

<sup>213</sup> Vol. 2, Observ. 46. On pp. 475-476 Boullenois quotes from Colerus, *de Process. execut.* The first part of the quotation consists of a statement of the following general principles which Colerus deems applicable to a contract of sale: "*Si agitur de subjiendo contractum Legibus, aut Consuetudini alicujus loci, tunc attenditur locus, aut Consuetudo fori, ubi verba obligatoria proferuntur, et contractus perficitur, non autem locus destinatae solutionis: Consuetudo si quidem loci ubi negotium geritur, ita subintrat ipsum contractum, ut secundum Leges loci intelligatur actus fuisse celebratus, quamvis ea de re nihil fuerit expressum.*" Then follows an application of these principles to the sale of a horse at Magdeburg, the purchase price being payable in Nuremberg. Colerus reaches the conclusion that the law of Magdeburg should control the implied warranties of the vendor. Boullenois remarks with reference to the above: "I agree with the decision of Colerus, but not with his preliminary principles. In my opinion the law of the place of contracting must be followed in this case because, inasmuch



preferred the law of the place of performance to that of the place of contracting. Froland does not discuss the question. Bouhier<sup>215</sup> is not specific but seems to favor the *lex loci contractus*.

As a result of Savigny's influence the prevailing view in Germany today holds that the parties must be deemed to have contracted with reference to the law of the place of performance.<sup>216</sup> But this was not the view of the old German writers, and Story is wrong when he cites Hertius as favoring the *lex loci solutionis*. Story relies upon number 53 of that author's work, *De collisione legum*. Hertius asks the following question:<sup>217</sup>

"*Praestanda sunt aliqua ex contractu, quae postea acciderunt v. g. propter culpam vel moram; quaeritur, si discrepent leges, utra utri praeponderet?*"

His answer is:

"*Quidam ad locum iudicii respiciunt, quidam ad locum destinatae solutionis. Ut Bartolus, Barbosa, quos sequitur Brunnem. ad L. 6. de evict. n. 7. Christin, V. 1. D. 283. n. 12. seq. Ab utrisque recte dissentit D. Cocceius Diss. de fundat. in territ iurisdic. tit. 6 § 7. quia obligationes culpa vel morae ex ipso contractu oriuntur, eiusque propriae praestationes sunt.*"

Hertius says that the obligations arising from a breach of contract on account of negligence or default are governed, according to some, by the law of the forum, and, according to others, by the law of the place of performance, citing Bartolus and Barbosa; but he adds that Cocceius rightly dissents from either view. It would seem from this that Cocceius must have favored the law of the place of making and that Hertius agrees with this view. That such was the opinion of

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as movable property is involved, and a bargain, the making and performance of which take place on the spot, the intention of the parties cannot have been other than to conform to the law of the place where they contracted." Boullenois evidently approved the *lex loci solutionis* as the governing law, but regarded the collateral contract of warranty as an executed transaction and not as a contract to be performed in the place where the contract of sale was performable, that is, where the purchase price was to be paid.

<sup>214</sup> *Contrat de change*, no. 155. After holding that the form of protest is governed by the law of the place of payment Pothier states that the same rule applies to the time within which the protest must be made or notice thereof given. "For," he continues, "a bill of exchange is deemed executed at the place where it is payable, according to the rule of law: *Contraxisse unusquisque in eo loco intelligitur, in quo, ut solveret, se obligavit*; 1. 21, *de obl. et act.* Hence, the obligations arising therefrom must be governed by the laws and usages of that place, to which the parties must be deemed to have submitted."

<sup>215</sup> Vol. 1, pp. 612 *et seq.*

<sup>216</sup> See resolutions in favor of the *lex loci solutionis* adopted by the association of German jurists in 1897, *Verhandlungen des 24. deutschen Juristentages*, IV, 127.

<sup>217</sup> *Hertii Opera, de Collis*, Leg. s. 4. sec. 53, p. 147.

Hertius appears clearly from number X of his treatise, where he lays down the following rule: "*Si lex actui formam dat, inspiciendus est locus actus, non domicili, non rei sitae.*" In the comment which he adds, he says:<sup>218</sup>

"*Valet (II.) ut extendatur ad consequentia sive profluentia ex actu illo principali, de quo elegans est L. 6. ff. de Evict. Si fundus venierit ex consuetudine eius regionis, in qua negotium gestum est, pro evictione cavere debet. Quae enim auctoritate legis vel consuetudinis contractum concomitantur eidemque adhaerent, naturalia a Dd. appellantur: & sicut consuetudo, ita etiam lex & statutum est altera quasi natura, & in naturam transit. 1. 31. §20. de aedilit, edict. Scip. Gentil. de solennit, c. 4. Mantie. 1. 1. de tacit. et ambig. conuent. tit. 13. n. 10. t. 14. n. 4. Hinc quantitas usurarum definienda est secundum leges loci, ubi contractus fuit initus. L. 1. pr. D. de usur. 1. 37. eod. Consult. Holland. part. 2, cons. 1. Idem dicendum de solutione. Brunnem. ad. d. 1. 6. de evict. n. 9 et 10. Nec obstat forum fieri competens in loco destinatae solutionis, sive ubi ex contractu aliquid praestandum est. L. 21. ff. de O. et A. 1. 3. de reb. auct. iud. poss.*"

The *naturalia* of a contract are determined, therefore, according to Hertius, by the *lex loci contractus* and not by the *lex loci solutionis*. As the meaning of Hertius is plain, and the conclusion above stated, so far as the author is aware, is not challenged by anybody,<sup>219</sup> Story's reference to Hertius in support of the *lex loci solutionis* must be due either to accident or to mistake.

Instead of having the "general assent of foreign jurists," as Story maintains, our investigation up to this point has shown that the *lex loci solutionis* was rejected at least by the Italian school and by the older German school of jurists.

The jurists giving the most direct support to Story's statement are the Dutch writers, and it is from these that all of Story's quotations are taken. Story admits in the later editions of his work, that the Dutch writers themselves were divided upon the subject, mentioning John à Sande as favoring the *lex loci contractus*. Story quotes only from Paul Voet, Huber, and Everhardus. There is, moreover, reason to doubt whether Paul Voet would have subscribed to the *lex loci solutionis* as governing the obligation of contracts in all respects. The first passage from Paul Voet quoted by Story is preceded in the original text by the following:

"*Quod si de ipso contractu quaeratur, seu de natura ipsius contractus, seu iis quae ex natura contractus veniunt, puta fidejussione, etc., etiam spectandum est loci statutum, ubi contractus celebra-*

<sup>218</sup> Hertii Opera, de Collis, s. 4. sec. X, pp. 126-127.

<sup>219</sup> See, for example, Bar, 540, n.; Wächter, 43, n.



*tur . . . : quod ei contrahentes semet accommodare praesumantur.*<sup>220</sup>

Fiore,<sup>221</sup> and Rivier,<sup>222</sup> (in his notes to Asser's *Conflict of laws*), both conclude that Paul Voet drew a distinction between the *vinculum juris*, i.e., the intrinsic validity, substance and extent of the obligation, in regard to which the *lex loci contractus* would govern, in accordance with the passage above quoted, and the *onus conventionis*, i.e., the performance, in regard to which the law of the place of performance would control, as indicated in the quotation given by Story. The passage from Everhard,<sup>223</sup> cited by Story, relates to the value of money, which, according to Everhard, is to be controlled by the law of the place of payment. As the question discussed relates to the performance of the contract Everhard also may have had in mind the above distinction. Huber<sup>224</sup> lays down the rule that the law of the place of performance governs in general terms. He says: "The place, however, where a contract is entered into is not to be considered absolutely, for if the parties had in mind the law of another place at the time of contracting the latter will control. 'Every one is deemed to have contracted in that place in which he is bound to pay or to perform (l. 21, O. et A.).' " Burgundus,<sup>225</sup> on the other hand, would determine the validity and obligation of contracts in accordance with the law of the place of making and would restrict the application of the law of the place of payment to questions relating to performance.

Story's assertion that the *lex loci solutionis* is supported by the general consent of the foreign jurists proves, therefore, to be inaccurate.<sup>226</sup>

As for the English and American authorities, the first sanction to be given to the theory that the *lex loci solutionis* should determine the obligation of contracts is found in a dictum by Lord Mansfield in *Robinson v. Bland*<sup>227</sup> to the following effect:

<sup>220</sup> P. Voet, *de Stat.* sec. 9, ch. II, n. 10.

<sup>221</sup> 1 Fiore, 161.

<sup>222</sup> Rivier, 74, n.

<sup>223</sup> Consil. 78.

<sup>224</sup> *De conflictu legum*, no. 10. See also Voet, J., *De reb. cred.* no. 25; *De in integr. rest.* no. 29.

<sup>225</sup> Tract. IV, nos. 7, 29.

<sup>226</sup> See also Aubry, 23 Clunet, 465; 1 Fiore, 163; 1 Foelix, 235.

<sup>227</sup> (1760) 2 Burr. 1077-1079:

"The action was an action upon the case upon several promises; and the declaration contained three counts. The first count was upon a bill of exchange, drawn at Paris, by the intestate Sir John Bland, on the thirty-first of August,



"The law of the place can never be the rule where the transaction is entered into with an express view to the law of another country as the rule by which it is to be governed."

When Story wrote his treatise on the *Conflict of laws* in 1834, Lord Mansfield's *dictum* had already been followed by a number of courts in the United States.<sup>228</sup> In none of these cases is there any discussion of the rule to be adopted. The authority of Lord Mansfield was sufficient to preclude the need of a consideration of the matter *de novo*.<sup>229</sup> And what support did Lord Mansfield adduce for the rule laid down? None except the passage from Huber quoted by Story and the statement that Voet supported the same doctrine.<sup>230</sup>

1755, and bearing that same date, on himself in England, for the sum of £672 sterling, payable to the order of the plaintiff, ten days after sight, value received and accepted by the said Sir John Bland. . . .

"The first question is, whether the plaintiff is entitled to recover upon this bill of exchange, by force of the writing. . . .

"There are three reasons why the plaintiff cannot recover here upon this bill of exchange.

"First, the parties had a view to the laws of England. The law of the place can never be the rule, where the transaction is entered into with an express view to the law of another country, as the rule by which it is to be governed. *Huberi Praelectiones*, lib. 1, tit. 3 pa. 34, is clear and distinct: '*Veruntamen, &c. locus in quo contractus, &c. potius considerand, &c. se obligavit.*' Voet speaks to the same effect.

"Now here, the payment is to be in England; it is an English security, and so intended by the parties.

"Second reason—Mr. Coxe has argued very rightly, 'That Sir John Bland could never be called upon abroad for payment of this bill, till there had been a wilful default of payment in England.' The bill was drawn by Sir John Bland on himself, in England, payable ten days after sight.

"In every disposition or contract where the subject matter relates locally to England, the law of England must govern, and must have been intended to govern. Thus, a conveyance or will of land, a mortgage, a contract concerning stocks, must be all sued upon in England; and the local nature of the thing requires them to be carried into execution according to the law here.

"Third reason: The case don't leave room for a question. For the law of both countries is the same. The consideration of a bill of exchange might, in an action upon it, be gone into there as well as here. And as to the money won at play, it could not be recovered in any court of justice there, notwithstanding the bill of exchange.

"This writing is, as a security, void (being void for a gaming debt), both in France and in England. We may therefore lay the bill of exchange out of the case: it is very clear the plaintiff cannot recover upon that count."

<sup>228</sup> Story cites *Ludlow v. Van Rensselaer* (1806, N. Y.) 1 Johns. 94; *Powers v. Lynch* (1807) 3 Mass. 77; *Thompson v. Ketcham* (1811) 8 Johns. 146; *Fanning v. Consequa* (1820) 17 Johns. 511; *Prentiss v. Savage* (1816) 13 Mass. 20; *Van Reimsdyk v. Kane* (1812, D. C.) 1 Gall. 371; *Cox v. United States* (1832) 6 Pet. 172, 8 L. E. 359.

<sup>229</sup> "It is a principle too well known and established and founded upon reasons too obvious to require proof or illustration." Sedgwick, J., in *Powers v. Lynch* (*supra*) 77, 80.

"It seems to be an undisputed doctrine . . . This is nothing more than common sense and sound justice." Parker, C. J., in *Prentiss v. Savage* (*supra*).

<sup>230</sup> In the modern law of England the law intended by the parties is the law which governs the validity and obligation of the contract. "The essential validity

As neither Lord Mansfield nor Story nor any of the American cases have given any reasons for making the law of the place of performance govern the obligation of contracts, but have contented themselves with relying upon questionable passages from the Roman law and upon the writings of one or two of the old authors, it may not be amiss to examine the matter briefly with special reference to the law of bills and notes.

The main objections raised against the *lex loci contractus* are: (1) that the place of contracting is often accidental, being chosen without reference to its effect upon the contract; (2) that when the contract is concluded by correspondence the *lex loci contractus* can be determined only by a fiction of the law.

These specific objections, it is true, do not apply if the *lex loci solutionis* is adopted as the governing law. It would be error, however, to assume that the law of the place of payment would furnish an absolutely certain standard for the determination of the rights and obligations of the parties. In a vast number of the bills and notes issued no place of payment is specified. The determination of such place is governed, therefore, by a rule of law and this rule is ascertained in accordance with the law of the state or country before which the question comes up for decision. No uniformity of result will thus be reached.

In the cases where the place of payment is designated the problem is which rule will promote best the policy of the law as regards bills and notes. If we look at the question solely from the standpoint of the contracting parties the assumption is unwarranted in the average case that they contracted with reference to the law of the place of performance rather than with reference to the law of the place of execution; that they would have chosen the *lex loci solutionis* as the law governing the obligation of their contract if their attention had been directed to the matter. Since the law of the place of execution is the only law directly ascertainable at the time of contracting, and since knowledge thereof is accessible to both parties with equal facility, the assumption seems more rational that they would choose that law as the governing rule rather than the law of the place of payment. The law of the place of payment would be unknown to

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of a contract," says Dicey, "is (subject to the exceptions hereinafter mentioned) governed indirectly by the proper law of the contract. . . . Proper law of the contract means the law, or laws, by which the parties to a contract intended or may fairly be presumed to have intended, the contract to be governed; or (in other words) the law or laws to which the parties intended or may fairly be presumed to have intended, to submit themselves." *Conflict of laws* (2d ed.) 545, 529.



the parties in most cases, and information concerning it would not as a rule be readily obtainable.<sup>231</sup>

Whether any considerations of policy relating to bills and notes would make it expedient, notwithstanding the above conclusion, to adopt the law of the place of payment as the governing law can be determined only after the "Relationship of the Different Contracts" has been discussed.

## 2. RELATIONSHIP OF THE DIFFERENT CONTRACTS.

### *a. Theory of the Independence of the Different Contracts.*

Whichever rule is adopted as the governing law, an important question will be whether the obligations of the maker's, acceptor's, drawer's and indorser's contracts entered into in different jurisdictions shall be subjected to different laws, or whether all of these contracts shall be governed by a single applicatory law.

#### A. ANGLO-AMERICAN LAW.

##### (1) *English Law.*

Section 72 of the Bills of Exchange Act provides:

(2) "Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made." . . .

(3) "The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest

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<sup>231</sup> 1 Foelix, no. 96; Bustamante, 130-148.

The *lex loci contractus* is advocated as the law governing the application of the contract of the different parties to bills and notes by the great majority of authors who have made a special study of the problem. Beauchet, 62; Beirao, 67; Champcommunal, 150-200; Chrétien, 129; Despagnet, 989; 3 Diena, *Trattato*, 124; 2 Diena, *Principi*, 213; Esperson, 37; 1 Fiore, 164; Fiore, *Elementi*, 448; 2 Grünhut, 579; 4 Lyon-Caen & Renault, no. 645; Ottolenghi, 186; Schöffner, 122; Valéry, 1280. To the same effect, Asser, 209; Calvo, I, 438; Vincent & Penaud, 342. Jitta applies again the law of the fiduciary place of issue, II, 76, 95.

The Institute of International Law also supports the *lex loci contractus* as the governing law. 8 Annuaire, 121. At its session at Florence in 1908 the Institute adopted a series of resolutions as regards the law governing the obligation of contracts. According to these resolutions, if the parties have not expressed a real intention, the determination of the law to be applied shall be derived from the nature of the contract, from the relative condition of the parties and from the situs of the property. In the matter of bills and notes it is to be the law of the place where each contract is entered into, or, if such place be not mentioned in the instrument, that of the domicile of the obligor. Notwithstanding the above presumption, a manifestation of the real will of the contracting parties, even though it be tacit, shall prevail. 22 Annuaire, 289-292.



or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured."

## (2) *American Law.*

The great weight of authority applies the law of the place of performance to each of the contracts on a bill or note, and holds that the drawer and indorser do not promise to pay at the place of payment of the principal obligation, but at the place where their contracts are entered into.<sup>232</sup> As regards the second point a few cases take a contrary view.<sup>233</sup>

## B. CONTINENTAL LAW.

### (1) *French Law.*

The contracts of the drawer and indorser are subject to the law of the place where they are entered into, unless an intention to the contrary appears.<sup>234</sup>

### (2) *German Law.*

The German law agrees with the majority rule in the United States.<sup>235</sup>

### (3) *Italian Law.*

The law of Italy agrees in general with that of France.<sup>236</sup> When

<sup>232</sup> *Crawford v. Bank* (1844) 6 Ala. 12, 41 Am. Dec. 33; *Hunt v. Standart* (1860) 15 Ind. 33, 77 Am. Dec. 79; *National Bank v. Green* (1871) 33 Iowa, 140; *Briggs v. Latham* (1887) 36 Kan. 255, 59 Am. Rep. 546; *Short v. Trabue* (1863, Ky.) 4 Mete. 299; *Kuenli v. Elvers* (1859) 14 La. Ann. 391, 74 Am. Dec. 434; *Trabue v. Short* (1866) 18 La. Ann. 257; *Powers v. Lynch* (1807) 3 Mass. 77; *Williams v. Wade* (1840, Mass.) 1 Mete. 82; *Wood v. Gibbs* (1858) 35 Miss. 559; *Price v. Page* (1856) 24 Mo. 65; *Freese v. Brownell* (1871) 35 N. J. L. 285, 10 Am. Rep. 239; *Mackintosh v. Gibbs* (1911) 81 N. J. L. 577, 80 Atl. 554, Ann. Cas. 1912 D 163; *Aymar v. Sheldon* (1834, N. Y.) 12 Wend. 439, 27 Am. Dec. 137; *Spies v. National City Bank* (1903) 174 N. Y. 222, 66 N. E. 736, 61 L. R. A. 193; *Amsinck v. Rogers* (1907) 189 N. Y. 252, 82 N. E. 134, 121 Am. St. Rep. 858, 12 L. R. A. N. S. 875; *Lennig v. Ralston* (1854) 23 Pa. St. 137; *Read v. Adams* (1821, Pa.) 6 Serg. & R. 356; *Warren v. Citizens' Bank* (1894) 6 S. D. 152, 60 N. W. 746; *Douglas v. Bank of Commerce* (1896) 97 Tenn. 133, 36 S. W. 874; *Raymond v. Holmes* (1853) 11 Tex. 54.

<sup>233</sup> *Dunn v. Welsh* (1879) 62 Ga. 241; *Hibernian National Bank v. Lacombe* (1881) 84 N. Y. 367; *Peck v. Mayo* (1842) 14 Vt. 33, 39 Am. Dec. 205.

<sup>234</sup> Cass. (Feb. 6, 1900) S. 1900, 1, 161.

<sup>235</sup> (Mar. 28, 1883) 9 R G, 431; (Nov. 5, 1889) 24 R G, 112; (Oct. 4, 1889) 44 R G, 431.

<sup>236</sup> Cass. Florence (Apr. 8, 1895) S. 1896, 4, 7; Cass. Florence (Jan. 16, 1888) 15 Clunet, 735.

the parties are subjects of the same country they will be deemed to have contracted with reference to their national law.<sup>237</sup>

### C. LATIN-AMERICAN LAW.

The provisions of the Convention on Commercial Law, concluded at the Congress of Montevideo,<sup>238</sup> as well as the law of Latin-America in general,<sup>239</sup> subject the contracts of the drawer, acceptor and indorser to different laws, namely, to the law of the place where each contract was entered into.

### D. JAPANESE LAW.

Under the law of Japan likewise each contract is governed by the *lex loci contractus*.<sup>240</sup>

The legal systems of the above countries are thus agreed upon the principle of the independence of the different contracts on a bill or note. They regard the law of the place where the contract of a drawer or indorser is entered into as controlling the obligation of the contract. France, Italy, Japan and the Convention of Montevideo do so on the ground that the *lex loci contractus* as such governs, while Germany and the United States reach the same result through the application of the *lex loci solutionis*, which they regard as coinciding with the *lex loci contractus*.

In the words of Story:

"The drawer and indorsers do not contract to pay the money in the foreign place on which the bill is drawn; but only to guarantee its acceptance and payment in that place by the drawee; and in default of such payment they agree upon due notice to reimburse the holder in principal and damages at the place where they respectively entered into the contract."<sup>241</sup>

As for the English law, it is difficult to harmonize subdivisions (2) and (3) of section 72 of the Bills of Exchange Act. For an explanation of the subdivisions reference may be made to the discussion presented at pp. 104-105 above.

As the English law stands, the interpretation and obligation of each

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<sup>237</sup> Art. 9. Prel. Disp. Civil Code; Cass. Naples (Jan. 4, 1898) *La Legge*, 1898, 1, 617.

<sup>238</sup> See arts. 27-29 of the Treaty on Commercial Law of the Congress of Montevideo, *ante*, pp. 106-107.

The form of the notice to be given to the indorsers has been held to be subject to the same law. Argentina, C. A. C. XLII, 144, cited in *Commercial laws of the world*, "Argentina," 176, n. 2.

<sup>239</sup> Art. 738, Argentine Commercial Code.

<sup>240</sup> See *ante*, p. 108.

<sup>241</sup> Sec. 315.

respective contract would be governed by the law of the place where such contract is made, while the necessity of presentment, protest, or notice would be controlled "by the law of the place where the act is done or the bill is dishonoured."

So far as the place of performance of the drawer's or indorser's contract is concerned, the English law would seem to differ from the American and continental view. The more recent decisions have held that the drawer and indorsers are liable for the payment of the bill, not where they, respectively, entered into their contracts, but where the bill was to be paid by the drawee.<sup>242</sup>

*b. Theory that a Single Law Should Govern.*

Under the doctrine of the independence of the different contracts there is a possibility that one party may be liable under the law governing his contract, even though, because of a difference in the law governing the other contracts, he may have lost, without personal fault, all rights of recourse against the prior parties. Such a contingency is avoided if all parties are deemed to have contracted with reference to a single law (*Einheitstheorie*). Some of the older authors<sup>243</sup> were of the opinion that all of the parties must be deemed to have contracted with reference to the law of the drawee's domicile, which they regarded as the place at which the exchange contract had its seat. But this theory is now completely abandoned on the continent and elsewhere, where the doctrine of the independence of the different contracts is admitted on principle by all at the present day.<sup>244</sup>

In this country a few authors would apply to all parties the law of the place of payment of the bill or note. Minor does so on grounds of expediency. He says:<sup>245</sup>

"Expediency would seem to pronounce in favor of the latter view, and it is believed to be the better. To give every indorsement its own separate locality would impair most seriously the value of all negotiable instruments, even those which are in fact purely domestic, since

<sup>242</sup> *Hirschfield v. Smith* (1866) L. R. 1 C. P. 340; *Bouquette v. Overmann* (1875) L. R. 10 Q. B. 525. But see, *Gibbs v. Fremont* (1853) 9 Exch. 25.

<sup>243</sup> Pothier, *Traité du contrat de change*, sec. 155; 2 Brocher, 315-316.

<sup>244</sup> Asser, 210; Audinet, 612-613; Bar, 677; Beauchet, 63; Bettelheim, 174; Carrio, 255; Champcommunal, 155; Despagnet, 989-990; 3 Diena, *Trattato*, 86-87, 209; Esperson, 38; 1 Fiore, *Le droit*, 178; Fiore, *Elementi*, 448, 459; Gestoso y Acosta, 449-450, 452-453; 2 Grünhut, 578-579; 2 Jitta, 76; 4 Lyon-Caen & Renault, 558-559; 2 Meili, 334; 2 Meyer, 373; Minakuchi, 58, 118; Ottolenghi, 218, 472; Restropo-Hernandez, 455-456, 459; Schöffner, 121-122; Staub, art. 86, n. 7, 8; Surville & Arthuys, 727, 734-735; Valéry, 1283; Villalbi, 412; 4 Weiss, 459; Zavala, 186.

<sup>245</sup> p. 396.



the holder could not know where the prior indorsements were made and hence could not tell what the liabilities of the prior indorsers are, nor what steps he must take to secure that liability. The tendency of this rule is to destroy or impair the negotiability of such instruments. On the other hand, to hold the *locus solutionis* of each indorsement to be identical with the *locus solutionis* of the original contract creates one single law by which the liabilities of all the indorsers are to be ascertained, and would prevent the inconvenience (to use a mild term) to the holder of having to ascertain and comply with a number of different laws as to protest, notice of dishonor, and other steps to be taken in order to fasten responsibility upon the indorsers."

Daniel<sup>246</sup> reaches the same conclusion on principle. His view is set forth in the following words:

"This doctrine that the drawer and indorser are bound according to the law of the place of drawing or indorsing, although sustained by great weight of opinion, and an overwhelming current of authorities, has not escaped criticism and dissent, and rests, as it seems to us, rather upon the sanction of decisions than upon clear and well-defined principles. If *A*, in New York, draws a bill on *B*, in Richmond, directing him to pay \$1,000 at the First National Bank, in Raleigh, N. C., he thereby guarantees to *C*, the payee, that the money shall be there paid by *B* on the day of its maturity. He is as clearly bound as *B* is, although secondarily, that the money shall be paid at the time and at the place named. If either tenders the amount at the time and place, it would be a good tender. And, although *A*'s liability is contingent upon due notice of dishonor, the liability is, nevertheless, for breach of his contract that *B* should pay at Raleigh. He has contracted that the amount shall be there paid by the hand of *B*, and yet his contract is regarded as being governed by the law of New York; while *B*'s contract to pay by his own hand is governed by the laws of North Carolina. This seems to us an inconsistency of the law; and while the doctrine is now perhaps too well settled to be disturbed, it does not bear the test of searching analysis."

*c. Resolutions of the Institute of International Law.*

The Institute adopted the theory of the independence of the different contracts in the following resolution:<sup>247</sup>

"II. The effect and validity of a bill of exchange and a promissory note, of the indorsements, acceptances, and *aval* shall be governed by the law of the country in which these different acts occurred, without prejudice to the rules relative to the capacity of the parties. . . ."

The theory is abandoned, however, in important respects. The following resolutions show the extent to which the law of the place of issue is to control.<sup>248</sup>

<sup>246</sup> Sec. 901.

<sup>247</sup> 8 *Annuaire*, 121.

<sup>248</sup> *Id.*, 121-122.

"II. . . . The effect of the supervening contracts, however, shall not be greater in extent than that resulting from the creation of the instrument itself.

"III. The time allowed for presentment of bills of exchange and promissory notes payable at sight or after sight is determined by the law of the place where the original instrument was issued.

"IV. The duties of the holder with respect to presentment for acceptance and payment are fixed by the law of the place where the bill or note has been issued.

"VI. The defence of accident and *vis major* is allowed only if it is recognized by the law of the place of issue of the original instrument.

"VII. The time within which the right of recourse may be exercised against the indorsers or the other guarantors and against the drawer, or within which a direct action may be brought against the acceptor, is fixed by the law of the country in which the act which gives rise to the action took place.

"However, as against the indorsers and the other guarantors, the time can never exceed that laid down for the right of recourse against the drawer."

In some respects the law of the place of payment governs. Resolution V provides:<sup>249</sup>

"The law of the place where payment is to be made determines the mode of showing default of acceptance or payment and the form of protest, as well as the time within which it may be made.

"The notices to be given to the guarantors for the preservation of the right of recourse in case of default of acceptance or payment, and the time within which such notices may be given, are governed by the law of the place from which these notices are to be sent."

#### *d. Discussion of Foregoing Theories.*

The theory that a single law should govern the obligations of the various parties to a bill or note has obvious advantages over that of the independence of the different contracts. In case of recourse no difficulties can arise under the former theory from a possible difference in the laws of the states in which the contracts of the different parties may have been entered into. If in the framing of the uniform act a single law were to be chosen to regulate the rights and obligations of all parties, such a result might be reached by one of two courses. The law of the place of payment might be accepted as the rule governing the obligation of contracts, with a provision that the contracts of the drawer and indorser shall imply a promise to pay at the place where the principal obligor agrees to pay, instead of being regarded as contracts of indemnity. The other course would be to recognize the *lex loci contractus* as the controlling law and then to provide that

<sup>249</sup> 8 Annuaire, 122.



all parties must be deemed to have contracted with reference to the law of the place of issue of the original instrument. The author is not able to recommend the adoption of either of these courses. He cannot accept the view last suggested, adopted to a considerable extent by the Institute of International Law,<sup>250</sup> because there is no reason to assume that when the different parties enter into their respective contracts they have in contemplation the law governing the drawer's contract, i.e., the place of issue. So far as the nature of the original contract is concerned, such a presumption is fair and necessary. For example, where the original instrument is negotiable under the law of the place of issue, an indorser by the very act of becoming a party to the instrument may be presumed to have intended to incur the liability of an indorser of a negotiable bill or note. However, an assumption that the obligation of the acceptor's contract and the indemnity contracts of the indorsers are all entered into with reference to the law creating the original obligation of the maker or drawer is quite another matter. It does not seem to rest upon a reasonable basis. Every probability favors the view that each of them at the time of entering the contract had in mind the *lex loci* of his own contract.

Is it advisable, on grounds of policy, to adopt the law of the place of payment of a bill or note<sup>251</sup> as the law governing the obligations of all parties? From the standpoint of the different parties the *lex loci contractus* is the preferable rule, as was pointed out above. But if all contracts should be controlled by the same law the law of the place of payment would furnish the most acceptable rule. The law of the place of issue cannot bring about the application of one law. Presentment and protest in the nature of things must be made at the place of payment and notice of dishonor must be sent from such place; and in accordance with the law of all countries the mode in which these acts must be done is determined by the law of the place where these acts occur. Other matters, such as the determination of maturity, the damage recoverable in case of non-payment, and the like, are also generally deemed to be controlled by the law of the place of payment. With reference to a good many points there is dispute whether the *lex loci contractus* or the *lex loci solutionis* should govern. All these difficulties would be avoided if the law of the place of payment of the bill or note were accepted as the law governing

<sup>250</sup> *Ante*, pp. 125-126.

<sup>251</sup> The phrase "place of payment of the bill or note" is used here to designate the place where the maker of a note or the acceptor of a bill of exchange agrees to pay, and the residence of the drawee, where the bill is not accepted.



the obligations of all parties. In order to reach this result it would be necessary, however, to hold that the drawer and indorser promised to pay at such place of payment and not at the place at which they entered into their respective contracts.

However attractive the application of a single law may be and however reasonable Daniel's interpretation of the contract of the drawer or indorser may appear, the author hesitates to recommend this view in the face of the actual authorities. It would run counter to the overwhelming weight of authority in this country relating to the nature of the drawer's and indorser's contract and to the established law of France, Germany, Latin-America and Japan.<sup>252</sup> It is true that under the strict application of the doctrine of the independence of the different contracts it is possible for one party to be held under the *lex loci* of his contract although all means of recourse may be cut off against prior parties. With the reasonable limitations that should be placed upon the doctrine of the independence of the different contracts on a bill or note, as will appear below, it is believed, however, that cases of actual hardship will arise only under exceptional circumstances.

The author would recommend, therefore, the adoption of article 72 (2) paragraph 1 of the Bills of Exchange Act, notwithstanding the fact that this particular provision may have found its way into the English law as the result of a misunderstanding of Story.<sup>253</sup>

*e. Limits of the Theory of the Independence of the Different Contracts.*

All authorities supporting the doctrine of the independence of the different contracts on a bill or note are forced to admit that there are necessary limitations to the operation of this rule. These limitations result from the fact that there is but one original instrument, all the other contracts being superimposed or accessory. The courts, however, have not always borne in mind that the doctrine of the independence of the different contracts cannot reasonably be carried to the point of affecting the nature or interpretation of the original instrument. In the absence of an express qualification, the reasonable assumption must be that each party accepting or indorsing a bill or note did so upon the basis of the original contract.

There is universal agreement that everything affecting the manner

<sup>252</sup> *Ante*, pp. 122-123.

<sup>253</sup> The *lex loci contractus* should determine not only the conditions of the drawer's or indorser's liability on the bill or note, but also any quasi-contractual liability to which he may be subject when the right of recourse has been lost. Staub, art. 86, n. 10.

of presentment for acceptance and payment and the mode of protesting a bill or note must be done in accordance with the law of the state in which such presentment and protest must be made. This rule is the only practicable one. Hence all other parties, in the absence of an express stipulation to the contrary, are deemed to have intended, as reasonable men, that the acts which have to be done in a particular place should be carried out in the mode prescribed by the law or the usage of that place.

Beyond this there is conflict. Most of the problems will be separately considered below. They will raise the question whether one law should determine, with respect to all parties (1) the maturity of the instrument; (2) the time within which the presentment of bills of exchange, payable at sight or after sight, must be made; (3) the amount of recovery; (4) the necessity of presentment, protest and notice; (5) the time within which notice must be given; (6) the defence of accident or *vis major*.

One of the problems that may be discussed to advantage in this place relates to the negotiability of the instrument. We must assume in the present discussion that the instrument is a bill or note; for we are considering here the "obligation" of contracts, and not the validity of the instrument as a bill or note. The latter question was discussed in Chapter II. The present problem may be suggested by means of the following cases:

1. Suppose that Jones executes a promissory note in London payable to Smith in New York, in which he promises to pay Smith \$500. Smith indorses the note in New York to Adams. Neither the original instrument nor the indorsement contains words of negotiability. Under the Bills of Exchange Act the note is fully negotiable; under the law of New York it is not, for want of words indicating that it is payable "to order or bearer." Has Smith indorsed a negotiable or a non-negotiable note?

2. Suppose that a note is made in the state of *X* and is payable in the same state to "Smith or order." It is then indorsed by Smith in the state of *Y*. The note is not commercial paper under the law of the state of *Y*, although it is fully negotiable under the law of the state of *X*. Can Smith be held as the indorser of commercial paper?

3. Suppose that the note in the first case was issued in New York and was indorsed in London, the instrument and the indorsement having the same form as before.

4. Suppose that the note in the second case was executed in the state of *Y* and was indorsed in the state of *X*, the instrument and the indorsement having the same form as before.



There are several cases<sup>254</sup> in this country involving problems similar to the second one put above. *Hyatt v. The Bank of Kentucky*<sup>255</sup> may serve as an example. In that case a note executed and payable in Louisiana was indorsed in Kentucky. It was held that the quality of the instrument as commercial paper should be determined, as regards the Kentucky indorser, in accordance with the law of Kentucky. The reasoning of the court was as follows:

"Those, however, who become parties to it in Kentucky by indorsement, the legal effect of this indorsement, so far as it applies to them, must be determined by Kentucky law; nor will the existence of extrinsic circumstances, such as the knowledge on the part of the indorser of the legal character of the paper where it was enacted, change the character or degree of his liability. A party may know when he indorses a paper in Kentucky executed in Louisiana, that the law of the latter state imposes a different liability from the law of Kentucky, and still his assignment, being of itself an independent contract, must be regulated by the law where the contract is made, and no presumption should be indulged in to change its legal effect; and if presumptions are to determine these questions, it would be equally as just to presume that the party intended to be bound by the law of the place or state where the contract was made as that he intended to make himself liable under another and different law.

"It is to the interest of trade and commerce that there should be some fixed and permanent rule governing contracts of this character; and, with this rule established, no mere circumstances or presumptions should be permitted to fix a liability upon such paper other than the liability imposed by the law of the place where the contract is made."

Not only may the law governing the contracts of the different parties to a bill or note determine whether, with respect to each party, the instrument shall be deemed negotiable, but the law of the forum also may have a bearing on this question—for example, when the right of the assignee or indorsee to sue in his own name is involved.<sup>256</sup>

In the last edition of Wharton<sup>257</sup> we find the following summary concerning the law governing the negotiability of instruments:

"The cases, however, are by no means agreed that the question as to the negotiability of a particular instrument is always to be deter-

<sup>254</sup> *Hyatt v. Bank of Kentucky* (1871, Ky.) 8 Bush. 193; *Mackintosh v. Gibbs* (1911) 81 N. J. L. 577, 80 Atl. 554; *Nichols v. Porter* (1867) 2 W. Va. 13, 94 Am. Dec. 501. See also *Baker Company v. Brown* (1913) 214 Mass. 196, 100 N. E. 1025.

<sup>255</sup> (1871, Ky.) 8 Bush. 193, 198.

<sup>256</sup> See *Hakes v. Nat. Bank* (1895) 61 Ill. App. 501; *Roads v. Webb* (1898) 91 Me. 406, 40 Atl. 128; *Warren v. Copelin* (1842, Mass.) 4 Metc. 594; *Lodge v. Phelps* (1799, N. Y.) 1 Johns. Cas. 139; *Woods v. Ridley* (1850, Tenn.) 11 Humph. 194.

<sup>257</sup> By Parmele, vol. 2, p. 966.



mined by the law of the same jurisdiction, without reference to the particular quality or incident involved in the case. For this reason the question of the governing law with respect to negotiability cannot be satisfactorily treated in a general and abstract manner, and without reference to the particular quality or incident dependent upon the character of the instrument in that respect. . . .

"It may be pointed out in this connection, however, that according to the weight of authority, although there is some conflict upon the point, the negotiability of an instrument, as affecting the respective rights of one who has been fraudulently deprived of it, and one who has obtained the same from or through a third person who had no authority to transfer it, depends upon the law of the place where the transfer to the present holder took place, and not necessarily upon the substantive law of the original contract."

It may be that the English cases cited in support of the last paragraph quoted from Wharton,<sup>258</sup> relating as they do to foreign government bonds and to certificates of stock in foreign corporations, announce a rule which is dictated by sound considerations of policy, especially in a country like England, which has been the financial center of the world. Whatever attitude policy may dictate in this regard, it is submitted that the same considerations are not necessarily applicable to bills and notes. On the continent it is generally assumed that the law of the place of issue must fix the character of the instrument throughout its life, and that all parties, in the absence of an express declaration to the contrary, become bound upon that basis.<sup>259</sup>

The author is of the opinion that this represents the correct view, at least with regard to the supposititious cases (1) and (2), above. Article 72, subsection 1 of the English Bills of Exchange Act points in the same direction. An indorser, it is true, is regarded by the courts as in the position of a new drawer. If that rule were to be accepted without qualification, it would follow of course that the

<sup>258</sup> The cases relied upon are the following: *Gorgier v. Mievill* (1824) 3 B. & C. 45, 4 D. & R. 641, 2 L. J. K. B. 206; *Lang v. Smyth* (1831) 7 Bing. 284, 5 M. & P. 78, 9 L. J. C. P. 91; *Goodwin v. Robarts* (1876, H. L.) 1 App. Cas. 476, 45 L. J. Ex. N. S. 748, 35 L. T. 179, 24 W. R. 987; *Picker v. London & County Bkg. Co.* (1887) L. R. 18 Q. B. Div. 515, 56 L. J. Q. B. 299, 35 W. R. 469; *Williams v. Colonial Bank* (1888) 38 Ch. Div. 388, 57 L. J. Ch. 826, 59 L. T. 643, 36 W. R. 625; affirmed in (1890) L. R. 15 App. Cas. 267, 60 L. J. Ch. 131, 63 L. T. N. S. 27, 39 W. R. 17.

See also *Baker Co. v. Brown* (1913) 214 Mass. 196, 100 N. E. 1025. Compare *Wylie v. Speyer* (1881, N. Y.) 62 How. Pr. 107; *Savings Bank v. Nat. Bank of Commerce* (1889) 38 Fed. 800.

<sup>259</sup> Bar, 676, n. 47; 2 Diena, *Principi*, 312; Ottolenghi, 211. See also Restropo-Hernandez, 456-457.

negotiable character of the instrument would have to be determined *de novo* with respect to each indorser. It is submitted, however, that this would be unwise. Why should a party accepting or indorsing a bill or note executed in another state or country be allowed to question the character of the instrument? Such a right is certainly not in furtherance of the security of dealings in negotiable paper. The very object of the law of bills and notes is to facilitate the circulation of these instruments. Unless considerations of justice to the acceptor and indorser make it imperative that the character of the original instrument be determined in accordance with his own law, the law of the original place of issue should certainly control. Otherwise a bill or note intended to be negotiable, and so created by the law of the place of issue, would cease to be such with respect to the acceptor or any one of the indorsers if the *lex loci* of their respective contracts should regard the instrument as non-negotiable. However true the doctrine of the independence of the different contracts may be in general, the fact remains that there is one original contract and that the rest, superimposed upon it, have for their purpose the carrying out of the original contract. It is difficult to see how an acceptor or an indorser can complain if he is charged with knowledge of the law of the state or country in which the instrument is issued. His willingness to become a party to the instrument implies, of itself, a readiness to contract on the basis of its original character. Because of its tendency to facilitate the circulation of bills and notes, and the security of dealings with respect thereto, an imperative rule to this effect is, to say the least, reasonable.

It does not follow, however, that the same principle must of necessity be applied to supposititious cases (3) and (4).

In the discussion of the subject of "formal validity" it was pointed out that on mere grounds of policy, having for its object the security of local dealings in bills and notes, parties may be held under the English and German acts as acceptors or indorsers of negotiable paper. This is so even though the original instrument is void under the law of the place of issue, provided it is valid and negotiable according to the *lex loci* governing the acceptor's or indorser's contract. For like reasons it may be provided in supposititious cases (3) and (4) that the indorser of a note non-negotiable by the law of the place of issue but negotiable by the law of the place of indorsement, shall be liable as an indorser of negotiable paper.

The American courts determine the negotiability of bills and notes now by one law, now by another, according to the nature of the particular question before them. Their attitude is responsible for much



of the confusion to be found in the law of bills and notes, and it cannot be too severely condemned.

The suggestion has been made that the principle of the independence of the different contracts should also be restricted in another general direction. Assume that *A* has drawn a bill in the state of *X* and that *B* has indorsed it in the state of *Y*. The law of the state of *X* requires the bill to be protested but the law of *Y* has no such requirement. In strict theory, the holder is bound to take only those steps which are required by the law governing the contract of the party whom he intends to hold liable. Accordingly, if the holder in the above case should care to hold *B* merely, he might do so after due presentment and notice without protesting the bill. Unless such a protest be made, however, *A* is discharged and *B* would have no remedy over on the bill against *A*. Surville & Arthuys<sup>200</sup> therefore contend that under these circumstances the holder should not be allowed to recover from *B* unless he has secured to *B* a right of recourse against *A*. These writers would impose such a condition, however, only where the holder of the bill is in a position to take the steps required and is not prevented from doing so by *vis major* or accident.

The placing of such a duty upon the holder would relieve the indorser against whom recourse is taken from the harsh consequences to which a strict application of the *lex loci contractus* might lead, and therefore deserves careful consideration. The question is, however, whether such a departure from principle will operate justly with respect to the holder. He has taken the bill or note mainly in reliance upon *B*'s credit. *B*'s contract is governed by the law of the place where the contract was entered into, that is, the law of the state of *Y*. If the qualification suggested is accepted, *B* can be held only if the holder has satisfied not only the requirements of the state of *Y* but also those of the state of *X* and of any other state in which the instrument may have been indorsed, so far as they may be necessary to secure to *B* his rights of recourse against the prior parties. Such a burden would be unreasonably heavy, if the conditions under which liability is assumed by the parties in accordance with the laws of bills and notes of the different countries should vary greatly. As between the Anglo-American system and that of the Convention of the Hague it would impose upon the holder only the additional duty of protesting the instrument for non-acceptance or non-payment. Such a protest is invariably made in connection with international bills of exchange. Accordingly, the problem under consideration would have practical significance only in the exceptional cases where

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<sup>200</sup> p. 737.



no protest has been made, or where, under circumstances not constituting *vis major*, there has been a delay in making the protest. The suggestion made by Surville & Arthuys cannot possibly be approved until all leading nations other than the Anglo-American have accepted the Uniform Act of the Convention of the Hague.

## II. SPECIFIC QUESTIONS

### 1. EFFECT OF NEGOTIATION IN ANOTHER STATE.

The contracts of the maker and acceptor, in accordance with the foregoing conclusions, are subject to the law of the place of contracting.<sup>261</sup> This law should determine the nature, interpretation and obligation of the contract, the conditions upon which liability is assumed, and the defences, legal and equitable, which may be available.<sup>262</sup> As regards the contracts of the drawer and indorser, it has been pointed out that they are independent contracts, whose interpretation and obligation should be governed by the law of the place where made.<sup>263</sup> This law should determine, therefore, the nature and obligation of the drawer's and indorser's contracts in general, the conditions upon which their liability depends, and the defences which they may have.

The liability of each party to a bill or note is fixed once for all by the proper law and is unaffected by a transfer of the instrument in another state. If the law governing his contract allows a certain defence, even as against a holder in due course, it will be available to him notwithstanding the fact that the bill or note was negotiated in a jurisdiction under the law of which a holder in due course is protected against such a defence.<sup>264</sup> Article 30 of the Convention on Commercial Law concluded at the Congress of Montevideo is probably intended to express this rule. It provides that "the wider or narrower extent of the obligations of the respective indorsers shall

<sup>261</sup> See the cases collected in 61 L. R. A. 206-212, 19 L. R. A. N. S. 670-672.

<sup>262</sup> On the continent the *lex loci* of the acceptor's contract will also determine the question whether an acceptance of a bill of exchange raises a presumption in favor of the existence of a "cover." 3 Diena, *Trattato*, 126; 4 Lyon-Caen & Renault, 558; Ottolenghi, 194.

<sup>263</sup> See the cases collected in 61 L. R. A. 215-222, 19 L. R. A. N. S. 672-674.

As regards the regular indorser, see 61 L. R. A. 200-202, 19 L. R. A. N. S. 668-670.

<sup>264</sup> *Ory v. Winter* (1826, La.) 4 Mart. N. S. 277. See also Audinet, 612; 3 Diena, *Trattato*, 88; 4 Lyon-Caen & Renault, 559; Ottolenghi, 151, 219; Surville & Arthuys, 727-728; 4 Weiss, 461.

not affect the rights previously acquired by the drawer and the acceptor.”

All courts admit that the character of the instrument as a negotiable or non-negotiable instrument cannot be affected, *as regards each party*, by a transfer of the bill or note in another state or country where the law is different.<sup>265</sup>

## 2. LAW GOVERNING HOLDER'S TITLE.

Each party promises to pay the sum specified in the instrument in accordance with the tenor of his contract. This presupposes that the holder has acquired a valid title to the bill or note. The question now is whether the title must be good according to the municipal law of bills and notes of the country in which the party to be charged assumed liability, or whether the promise to pay embraces any person who has acquired a valid title under the law of the place where the transfer occurred.

### A. ANGLO-AMERICAN LAW.

#### (1) *English Law.*

The Bills of Exchange Act provides as follows:<sup>266</sup>

“Subject to the provisions of this Act the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made.

“Provided that where an inland bill is indorsed in a foreign country the indorsement shall, as regards the payor, be interpreted according to the law of the United Kingdom.”

According to this section the acceptor of an order bill promises to pay the same to a party who has acquired title thereto by an indorsement which is valid under the law of the place of indorsement, but the contract of the acceptor of an inland bill indorsed in a foreign country is to pay to any order or upon any indorsement which is valid by the mercantile law of England. Before the Bills of Exchange Act the English law was in an uncertain state.<sup>267</sup>

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<sup>265</sup> *Krieg v. Palmer Nat. Bank* (1911) 51 Ind. App. 34, 95 N. E. 613.

<sup>266</sup> B. E. A. sec. 72 (2).

<sup>267</sup> In *Lebel v. Tucker* (1867) L. R. 3 Q. B. 77, action was brought against the acceptor of a bill of exchange which was drawn, accepted, and payable in England, but was indorsed in blank in France. The defence was that the indorsement was made in France and was not conformable to the law of France which required that the indorsement should bear a date and express the consideration for the indorsement and the name of the indorsee. This was held to be no answer to the action. “The acceptor having contracted in England to pay in England the contract must be interpreted and governed by the law of England.”



(2) *American Law.*

There are no American cases which are helpful in the matter now under consideration.<sup>268</sup>

## B. FOREIGN LAW.

No statutory provisions nor decisions on the question have been found in the law of continental Europe, Latin-America or Japan.

## C. DISCUSSION.

The English courts, before the Bills of Exchange Act went into effect, operated seemingly with the so-called intention theory. If the negotiation of the instrument abroad was, or must be "deemed" to have been, within the contemplation of the maker or acceptor, liability would exist in favor of an indorsee who had acquired title under the law of the place of indorsement; whereas if no such negotiation was contemplated, the indorsee's title would be determined by the law governing the maker's or acceptor's contract. Notwithstanding a contemplated negotiation abroad, the transfer need not conform, however, to the law of the place of indorsement whenever it clearly appears from the terms of the instrument that the parties contracted with reference to the law of England.

The intention theory, as appears from the English cases, leads to uncertain results. This is inevitable because of the absence of fixed criteria from which the intention of the parties can be ascertained. The English cases, decided before the Bills of Exchange Act was

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In *Bradlaugh v. De Rin* (1868) L. R. 3 C. P. 538 a bill was drawn in Belgium on England. It was accepted in England and was indorsed in blank in Belgium. By a divided court, it was held that the law of Belgium must determine the right of the indorsee to sue the acceptor. The court assumed that the indorsee could have no rights against the acceptor unless the indorsement transferred such rights to him under the law of the state where the indorsement was made, the reason being that if the drawer cannot be made liable, the acceptor paying the instrument cannot charge the sum against him. The court seemingly overlooked the fact that the argument would apply equally to *Lebel v. Tucker*. The real explanation of the two cases probably lies in the fact that in *Lebel v. Tucker* an indorsement abroad was not deemed within the contemplation of the parties, while the contrary must have been true in *Bradlaugh v. De Rin*.

In a later English case on the subject, *In re Marseilles Extension Railway & Land Company* (1885) 30 Ch. D. 598, a bill was drawn in France by a Frenchman in the French language but in the English form on a company in England. It was both accepted and payable in England, and was indorsed in blank in France. In an action against the acceptor it was held that English law must govern because the special facts in the case showed an intention that it be an English bill.

<sup>268</sup> See *Everett v. Vendryes* (1859) 19 N. Y. 436; *Brook v. Vannest* (1895) 58 N. J. L. 162, 33 Atl. 382; 2 B. R. C. 304-309.



passed, involved the question of blank indorsements; and it was erroneously assumed that the law of the foreign country denied to the indorsee under such an indorsement the right to sue in his own name.

The Convention of the Hague has accepted the Anglo-American law with respect to blank indorsements.<sup>269</sup> A wide difference between Anglo-American law and that of the Hague Convention exists, however, concerning the genuineness of indorsements. Under Anglo-American law title cannot be acquired through a forged indorsement.<sup>270</sup> According to the Convention of the Hague the chain of indorsements need only be regular; the indorsements are not required to be genuine.<sup>271</sup> Suppose that a person has taken a bill or note bearing a forged indorsement in a country by whose law he will acquire title. Will he be able to recover against an English or an American maker or acceptor? This situation was presented in the case of *Embiricos v. Anglo-Austrian Bank*.<sup>272</sup> In that case a Rumanian bank drew a check on a London bank payable to the order of A. A indorsed the check in Rumania specially to B of London. The check was stolen by A's clerk, who forged B's signature, and it was cashed in good faith and without gross negligence by a bank in Vienna. At the time of such payment the indorsements were apparently regular and in order. The Vienna bank indorsed the check to C in London, who presented it to the bank on which it was drawn and received payment. In an action by A against C for conversion, Walton, J., gave judgment for the defendant on the ground that the Vienna bank had secured title to the check under Austrian law which the English courts were bound to recognize, and had assigned that title to C. The judgment was affirmed by the Court of Appeal. In the lower court the conclusion was based on the ground that under the decision of *Alcock v. Smith*<sup>273</sup> the English law would recognize a title to a bill which had been validly acquired under the *lex rei sitae*. The court was also of the opinion that the judgment could be based upon section 72 of the Bills of Exchange Act if the word "interpretation," as applied to the indorsement, included the legal effect of the transfer by indorsement. The Court of Appeal accepted the first ground and held that section 72 of the Bills of Exchange Act contained nothing to prevent the English courts from recognizing the title acquired under Austrian law. Although the action was between the payee and the indorsee, it would

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<sup>269</sup> Art. 12, Uniform Law.

<sup>270</sup> N. I. L. sec. 23; B. E. A. sec. 24.

<sup>271</sup> Arts. 15 and 39, Uniform Law.

<sup>272</sup> (C. A.) [1905] 1 K. B. 677, 74 L. J. K. B. 326.

<sup>273</sup> (C. A. 1891) [1892] 1 Ch. 238.

seem that the same result should follow where suit is brought against the acceptor or the maker. Says Vaughan Williams, L. J.:<sup>274</sup>

"But it would manifestly be an unsatisfactory state of the law if the legal result is that the indorsement is effective to give the indorsee of a bill a good title as against the payee, but not effective according to English law to give that indorsee a good title against the drawer or the acceptor. And it would be convenient, as well from a legal as from a commercial point of view, that it should be established that the title by such an indorsement is good as against the original parties to a negotiable instrument, having regard to the contractual liability incurred by them thereby. I do not think that *Alcock v. Smith* [1892] 1 Ch. 238, decides this question; on the contrary, it seems to me that the judgments of Romer, J., and the Court of Appeal both disclaim so doing; and, further, it seems to me that the law as laid down by Pearson, J., in *In re Marseilles, etc., Land Company*, 30 Ch. D. 598, and by Lush, J., in *Lebel v. Tucker*, L. R. 3 Q. B. 77, 83, is, in effect, authority to the contrary. At all events, it has never been decided that the liability of an acceptor in England of a bill drawn abroad or of the drawer of a cheque payable in England amounts to a contract to pay on a forged indorsement valid by the foreign law, but invalid by the law of England. It may, however, be that the contract of the drawer or acceptor is to pay on any indorsement recognized by the law of England, even though that indorsement be invalid according to what I will call for convenience the local law of England. I am disposed to think that this is the true contract. If the contract of the drawer of a cheque or acceptor of a bill were limited to payment on the indorsements valid by the English local law an argument might be raised that, even though the indorsement abroad was valid to legalize the possession by the indorsee claiming under the foreign indorsement, yet he would be guilty of a conversion if he used a negotiable instrument to the possession of which he was entitled for the purpose of obtaining and did obtain payment from an original party to the negotiable instrument from which he could not have recovered by process of law."

The transfer of chattels is now governed in England in accordance with the following rules:

"Rule 143. An assignment of a movable which can be touched (goods) giving a good title thereto according to the law of the country where the movable is situate at the time of the assignment (*lex situs*), is valid.

"Rule 145. . . . The assignment of a movable, wherever situate, in accordance with the law of the owner's domicile, is valid."<sup>275</sup>

So far as they are consistent with section 72 (2) of the Bills of Exchange Act, these rules can be applied in England to bills and notes. As the Bills of Exchange Act adopts on principle the *lex loci contractus* as the law governing the transfer of bills and notes, instead

<sup>274</sup> (C. A. 1905) [1905] 1 K. B. Div. 677, 684-685.

<sup>275</sup> Dicey, 519, 525.



of the *lex domicilii*, rule 145 cannot be applied. But there is no reason why rule 143 should not be so extended as, in general, to embrace bills and notes. In a case like *Lebel v. Tucker*<sup>276</sup> the law of the *situs* will be excluded, however, under the positive provision of the Bills of Exchange Act,<sup>277</sup> according to which the contract of the acceptor of an English bill is to be interpreted as requiring an indorsement in the sense of the English Act.

Which rule should be incorporated into the uniform act? The author would submit that the acceptor or maker of a negotiable bill or note should be bound with respect to any party acquiring title to the instrument in accordance with the law governing the contract of such maker or acceptor. As the *lex loci contractus* determines the extent of the liability of the maker and acceptor in general, a transfer satisfying that law should be sufficient. There is no good reason why a person who became a party to a bill or note in a country in which a blank indorsement is allowed should not be held notwithstanding the plaintiff acquired the instrument in a country under whose law such an indorsement would not pass title. Nor is there a sufficient reason why a party who issues, accepts, or indorses a negotiable bill in a country whose law does not require "genuine" indorsements should not be bound notwithstanding the plaintiff acquired the instrument on which an indorsement in the chain of title is forged in a country under whose law no title could pass.

Should plaintiff's title fail by operation of the above rule where under the law of the place governing the defendant's contract no title passed, although such title was valid under the law of the place where plaintiff acquired the instrument? The author is of the opinion that it should not. This conclusion appears most reasonable in the case where the defendant became a party to the instrument in a country whose law does not recognize blank indorsements. If the plaintiff acquired title to the instrument in a country in which blank indorsements are sanctioned by law, there is no reason why such title should not be recognized everywhere. Where, as in the case of *Embiricos v. The Anglo-Austrian Bank*,<sup>278</sup> the plaintiff claims title through a forged indorsement, the title being valid according to the law of the place of transfer, the question is more doubtful. On the one hand it may be said that a party executing a negotiable instrument or becoming a party thereto may be reasonably charged with notice that the bill or note may be transferred in a state other than the one in

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<sup>276</sup> (1867) L. R. 3 Q. B. 77.

<sup>277</sup> B. E. A. sec. 72 (2) par. 2.

<sup>278</sup> (C. A.) [1905] 1 K. B. 677, 74 L. J. K. B. 326.



which it was issued or in which it is payable and that he shall be bound, therefore, by the law of such state. The modern rule relating to the transfer of chattels may be invoked by way of analogy in favor of this view.

Looking at the question from the standpoint of American law, the question would be whether a title acquired under the law of the place of transfer through a forged indorsement should be respected. Is not such a passing of title opposed so clearly to our fundamental notions of justice that giving effect thereto would be in contravention of our policy? The author is inclined to accept the view of Vaughan Williams, L. J., and to recognize a title acquired under the law of the place of transfer. Whether the owner of a negotiable instrument whose signature has been forged or whether the party who in good faith acquired such instrument should be protected is a question in regard to which Anglo-American law has taken one view and the continental countries another. Even in England, bankers upon whom checks or other demand drafts payable to order are drawn are relieved from the responsibility of verifying the indorsements where the instrument is paid in good faith and in the ordinary course of business.<sup>279</sup> Whether one rule or the other should be chosen is merely a question of commercial policy. As no moral issues are involved the recognition of such foreign acquired title would not shock the conscience of our courts. In the opinion of the author the uniform act should provide that each party be held if the holder of the instrument has acquired title in accordance with the municipal law of the state where such party's contract was made, but that title acquired in conformity with the law of the place of transfer shall be recognized with respect to all parties. The provisions of the Bills of Exchange Act on this point are inadequate.

### 3. HOLDER IN DUE COURSE.

According to Anglo-American law, personal defences are cut off when the instrument passes into the hands of a holder in due course. On the continent, where the notions of "holder for value" or "holder in due course" are unknown, a title free from personal defences will be acquired if the purchaser acted in good faith. The Negotiable Instruments Law aimed to unify the law of this country with respect to the question of what constitutes value. It failed to accomplish its purpose, for the New York courts still adhere to their former doctrine that a transfer of a bill or note by way of collateral security for an

<sup>279</sup> *Ante*, p. 48.

antecedent debt does not constitute a transfer for value.<sup>280</sup> Assume that a bill or note is transferred in a jurisdiction where the holder in due course is unknown to the law, or in a jurisdiction where the term "holder in due course" is defined otherwise than under the *lex loci* of the maker's or acceptor's contract. Which law is to control? The American courts occasionally apply the law of the place of indorsement,<sup>281</sup> but more generally the law of the place of payment of the bill or note,<sup>282</sup> that is, the law which, in their opinion, governs the obligation of the maker's and of the acceptor's contract. It has been suggested also that the question should be determined by the law of the forum as a matter of general commercial law.<sup>283</sup>

The view last mentioned cannot be sustained although the federal courts<sup>284</sup> have taken the position that in matters of general commercial law they will follow their own views instead of the law of the state or country in which the contract may have been entered into or is to be performed. There is no justification for such an attitude on the part of the state courts.<sup>285</sup>

On behalf of the view first stated it may be urged that upon a proper analysis of the question it is found to relate to the *power* of the holder to transfer the instrument free from certain defects or defences, and that the effect of such power should be measured by the law of the place where it is to be exercised. From this mode of reasoning it would follow that a defendant could not avail himself of any defence which the law of the place where he entered into his contract might allow even against the holder in due course if the law of the place of transfer would cut off such a defence. This result

<sup>280</sup> The appellate division of the supreme court of New York has so held on several occasions. See *Sutherland v. Mead* (1903) 80 App. Div. 103, 80 N. Y. Supp. 504; *Roseman v. Mahony* (1903) 86 App. Div. 377, 83 N. Y. Supp. 749; *Bank of America v. Waydell* (1905) 103 App. Div. 25.

<sup>281</sup> *Brook v. Vannest* (1895) 58 N. J. L. 162, 33 Atl. 382.

<sup>282</sup> *Webster v. Howe Machine Co.* (1886) 54 Conn. 394, 8 Atl. 482; *Woodruff v. Hill* (1874) 116 Mass. 310; *Allen v. Bratton* (1872) 47 Miss. 119; *Houston v. Keith* (1900) 100 Miss. 83, 56 So. 336; *Limerick National Bank v. Howard* (1901) 71 N. H. 13, 51 Atl. 641.

<sup>283</sup> 2 Ames, 806.

<sup>284</sup> *Swift v. Tyson* (1842, U. S.) 16 Pet. 1, 10 L. E. 865; *Baltimore & Ohio R. Co. v. Baugh* (1893) 149 U. S. 368, 13 Sup. Ct. 914, 37 L. E. 772.

<sup>285</sup> *Sykes v. Citizens National Bank* (1908) 78 Kans. 688, 98 Pac. 206; *Limerick Nat. Bank v. Howard* (1901) 71 N. H. 13, 51 Atl. 641; *Forepaugh v. Delaware, L. & W. E. Co.* (1889) 128 Pa. St. 217, 18 Atl. 503.

*Contra: Alabama Mid. Ry. Co. v. Guilford* (1903) 119 Ga. 523, 46 S. E. 655; *Franklin v. Twogood* (1868) 25 Iowa, 520; *Roads v. Webb* (1898) 91 Me. 406, 40 Atl. 128; *St. Nicholas Bank v. State Nat. Bank* (1891) 128 N. Y. 26, 27 N. E. 849.

would be in conflict, however, with the fundamental rule that the defences open to a party are governed by the law of the place where the contract is entered into.

The defences of a party being governed by the *lex loci contractus*, the question is whether the holder's status as a holder in due course should likewise be governed by that law whenever a distinction is made by the *lex loci* in the matter of defences between the holder in due course and the party who is not a holder in due course. It would seem that an affirmative answer should be given to the question. To say that the *lex loci contractus* is the proper law to determine the nature of the defences which a party may set up against a holder in due course and against a party who is not a holder in due course and yet to deny its competency to define what it understands by the term "holder in due course" is inconsistent and irrational. Both questions in the very nature of things should be governed by the same law.

From the standpoint of legislative policy it might not be unwise, however, to adopt an alternative rule and also to give to the holder the rights of a holder in due course when he is regarded as such by the law of the place of transfer. The defendant having issued or become a party to a negotiable instrument and by so doing having conferred upon each holder the power to transfer the instrument in another state or country, no injustice would be done to him if he were held under the above conditions. As such an alternative provision would afford a more extensive protection to the purchaser of negotiable paper and would thus increase its power to circulate, its adoption by the uniform act would serve a desirable end.

#### 4. MATURITY.

##### A. IN GENERAL.

The difference between the Anglo-American law and that of the Hague Convention relating to maturity or to the day of payment concerns, in the main, legal holidays and days of grace.<sup>286</sup> Between countries having different calendars a question may also arise regarding the law that shall fix the maturity of the instrument.

Whatever difference of opinion there may be concerning the doctrine of the independence of the different contracts, all are agreed that the date of maturity must be determined alike with respect to all parties. The time of payment being a term of the original contract, all supervening parties must be deemed to have contracted upon the

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<sup>286</sup> Days of grace are still allowed in England. B. E. A. sec. 14.



basis of that contract. The question therefore is whether the *lex loci contractus* or the *lex loci solutionis* of the bill or note shall govern.

## B. ANGLO-AMERICAN LAW.

### (1) *English Law.*

Article 72 (5) provides:

"Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable."

### (2) *American Law.*

It has been uniformly held that the existence of days of grace is to be determined in accordance with the place of payment of the bill or note.<sup>287</sup>

## C. CONTINENTAL LAW.

### (1) *German Law.*

The law of the place of payment governs in general.<sup>288</sup> Article 34 of the General Bills of Exchange Law contains an express provision on the subject of calendars which has the following wording:

"If a bill, payable after date within the Empire (inland), be drawn in a country reckoning by the old style, and there be no statement thereon, that the bill is dated after the new style, or, if such bill be dated according to both styles, the date of maturity is to be reckoned according to the day of the calendar of the new style which corresponds with the day of drawing according to the old style."

This article applies the calendar of the place of issue but it deals only with the case where a bill is drawn on Germany from a country having the old style and is payable after date. If the bill is payable

<sup>287</sup> *Bank of Washington v. Triplett* (1828, U. S.) 1 Pet. 25, 7 L. E. 37; *Vaughan v. Potter* (1907) 131 Ill. App. 334; *Thorp v. Craig* (1860) 10 Iowa, 461; *Vidal v. Thompson* (1822, La.) 11 Mart. 23; *Burnham v. Webster* (1841) 19 Me. 232; *Hammond v. American Express Co.* (1908) 107 Md. 295, 68 Atl. 496; *Cribbs v. Adams* (1859, Mass.) 13 Gray, 597; *Bank of Orange County v. Colby* (1842) 12 N. H. 520; *Bowen v. Newell* (1855) 13 N. Y. 290; *Pawcatuck Nat. Bank v. Barber* (1900) 22 R. I. 73, 46 Atl. 1095; *Bryant v. Edson* (1836) 8 Vt. 325, 30 Am. Dec. 472; *Walsh v. Dart* (1860) 12 Wis. 635; *Second Nat. Bank v. Smith* (1903) 118 Wis. 18, 94 N. W. 664.

<sup>288</sup> R G (Dec. 11, 1895) 6 Niemeyer, 429. In this case a bill was drawn from Germany on Portugal, payable three months after date. The question involved was whether the three months should be understood as calendar months or as ninety days.

Art. 35 of the German Exchange Act has the following provision:

"Bills payable at a fair or market become due in accordance with the local law of the fair or market place, or failing such fixed date, on the day before the legal close of the fair or market. If the fair or market lasts for one day only, the bill becomes due on that day."

on a particular day, the German calendar controls.<sup>289</sup> Where a bill payable after date is drawn in Germany on a country with the old style, the rule contained in article 34 is not applied by way of analogy and the date of maturity is determined in accordance with the calendar at the place of payment.<sup>290</sup>

(2) *Italian Law.*

There is no provision in the Italian codes on the subject.

D. CONVENTION OF THE HAGUE.

Article 36 of the Uniform Law contains the following provisions:

"When a bill of exchange is payable at a fixed date in a place whose calendar differs from that of the place of issue, the date of maturity shall be deemed to be fixed according to the calendar of the place of payment.

"When a bill of exchange drawn between two places having different calendars is payable at a certain time after date, the date of issue shall be referred to the corresponding day of the calendar of the place of payment, and the maturity shall be fixed accordingly.

"The time for presentment of bills of exchange is calculated in accordance with the rules of the preceding paragraph.

"These rules are not applicable if a stipulation in the bill of exchange, or even the mere terms of the instrument indicate an intention to adopt different rules."

E. DISCUSSION.

The actual law and the juristic opinion of the different countries agree that the law of the place of payment should determine the day of payment when the day of maturity falls on Sunday or on a legal holiday.<sup>291</sup> A similar agreement exists in the matter of days of grace, which are controlled by the same law.<sup>292</sup> Most of the authors feel that the question involved in the above cases does not affect the maturity of the instrument in any true sense, but affects only the precise day or incidents of payment; and that, like all matters affecting payment, the question should be subject to the law of the place of

<sup>289</sup> Staub, art. 34, n. 4.

<sup>290</sup> Staub, art. 34, n. 5.

<sup>291</sup> Bar, 674; Champecommunal, 204; 3 Diena, *Trattato*, 147; Esperson, 90-91; 2 Grünhut, 585; 4 Lyon-Caen & Renault, 563; Ottolenghi, 268; Restropo-Hernandez, 462; Staub, art. 86, n. 1; Surville & Arthuys, 729.

<sup>292</sup> Bar, 674; Beauchet, 69; Bettelheim, 191; Champecommunal, 204-205; Chrétien, 148; Despagne, 993-994; 3 Diena, *Trattato*, 150; Esperson, 90; Gestoso y Acosta, 454; 2 Grünhut, 585; Lehmann, 132; 4 Lyon-Caen & Renault, 563; 1 Massé, 571; Minakuchi, 124; 2 Nougier, 194; Ottolenghi, 290-291; Pardessus, no. 1495; Restropo-Hernandez, 462; Staub, art. 86, n. 1; Surville & Arthuys, 730; 4 Weiss, 465.

payment.<sup>293</sup> As the question is closely connected with the business usages and policies existing at the place of payment, the law of the place of payment should, on grounds of practical convenience, control with respect to all parties.<sup>294</sup>

Great diversity of opinion exists, however, in regard to the question of calendars. Some authors are of the opinion that the question affects the substance of the original contract so that the law of the place of issue should control.<sup>295</sup> Others bring it within the operation of the *lex loci solutionis* of the bill or note on the alleged ground that it relates to the performance of the contract.<sup>296</sup> The question relates to the interpretation of the original contract; and, in accordance with the general rule, should be subject to the law of the place of issue. However, as the steps necessary to preserve the rights of recourse against the drawer and the indorser must be taken where the instrument is payable, it has been deemed more convenient to apply the law of the place of payment. This view has been accepted by the Bills of Exchange Act and by the Convention of the Hague. As the practice of bankers appears to be in accord, the law of the place of payment should, on grounds of practical convenience, be adopted as the governing law by the uniform act. Where the day of payment is a certain time after date, the actual date must, of course, be understood.<sup>297</sup>

## 5. PRESENTMENT FOR ACCEPTANCE.

### (1) *English Law.*

The Bills of Exchange Act provides that "the duties of the holder with respect to presentment for acceptance . . . are determined by the law of the place where the act is done. . . ."<sup>298</sup>

<sup>293</sup> See, for example, 2 Grünhut, 585; Ottolenghi, 290.

<sup>294</sup> Staub maintained for a long time that the allowance of days of grace would change the day of maturity, but he abandoned that opinion in the end. See Staub-Stranz, art. 86, n. 1.

<sup>295</sup> Audinet, 614; Bettelheim, 167 and n. 117; Champecommunal, 201; Chrétien, 142; Despagnet, 994; 2 Jitta, 81, 111; Surville & Arthuys, 725.

<sup>296</sup> Bar, 675; Esperson, 89; 2 Grünhut, 585; 4 Lyon-Caen & Renault, 563; 1 Massé, 570-571; Nouguié, no. 1428; 4 Weiss, 465-466. Cf. 3 Dena, *Trattato*, 144-146; Ottolenghi, 265-266.

<sup>297</sup> "As regards the calendar," says Bar, p. 675, "we must start with this consideration, that the person who issues the bill imposes its conditions, and these he must express in the way in which they will be most easily understood at the place of payment. That is effected by fixing the day of payment according to the calendar that is in use at the place of payment. The matter stands otherwise if the day of payment is fixed at the expiration of a particular period from the date of the bill. The date is the day on which the bill is truly completed, not the day, which is described by the same title in another calendar, but is, of course, a different day altogether."

<sup>298</sup> B. E. A. sec. 72 (3).



(2) *French Law.*

The provisions of the French Code are admitted by the French writers themselves to be illogical and indefensible.<sup>299</sup> According to article 160 of the Commercial Code, in the case of instruments drawn in France on a foreign country, the time for presentment of drafts payable after sight is determined by French law. This law likewise governs when a draft is drawn in a foreign country on France.

(3) *Italian Law.*

The only relevant provision of the Italian law is contained in section 261 of the Commercial Code. This section provides that when, during times of maritime war, a sight draft is drawn in Italy on a foreign country, the time of presentment for acceptance shall be double the ordinary period. Ottolenghi<sup>300</sup> is of the opinion that this section by implication adopts the law of the place where the contract is made as controlling the time within which presentment for acceptance must be made.

(4) *Discussion.*

Of the continental text-writers the older authors regarded the holder's duty to present the instrument for acceptance and the time of such presentment as part of the performance of the exchange contract, and as subject, therefore, to the law of the place where the presentment was to be made.<sup>301</sup> Modern jurists generally agree in looking upon the question as one affecting the obligation of the various contracts, as distinguished from their performance. According to this view the *lex loci contractus* of the individual contracts would determine the duties of the holder.<sup>302</sup>

A number of authors, however, in a desire to have one law govern this question, suggest that the law of the drawer's contract should control.<sup>303</sup> This is also the recommendation of the Institute of International Law.<sup>304</sup> As each party is free to stipulate in regard to the question before us, it would seem clear upon principle that it affects the obligation of contracts, that is, the conditions upon which each individual contract was made. The *lex loci contractus* of the different parties should therefore be adopted by the uniform act as the rule governing the necessity and time of presentment for acceptance, unless

<sup>299</sup> See Despagnet, 994; 4 Lyon-Caen & Renault, 562.

<sup>300</sup> p. 183.

<sup>301</sup> Pothier, *Du contrat de change*, no. 155.

<sup>302</sup> Audinet, 615; Bettelheim, 192; 3 Diena, *Trattato*, 110, 113-114; 2 Grünhut, 587; 2 Jitta, 91; 4 Lyon-Caen & Renault, 562; 2 Meyer, 374; Ottolenghi, 165-166.

<sup>303</sup> Champcommunal, 152; Chrétien, 122-123; Esperson, 41-45; Surville & Arthuys, 726.

<sup>304</sup> 8 Annuaire, 122, resolution IV.

considerations of policy require a deviation from strict theory. A strict adherence to the doctrine of the independence of the different contracts may here lead to the result that the presentment may be sufficient as to some parties and insufficient as to others, so that the rights of recourse of the former against the latter may be cut off. Because of this fact a single law has been advocated. We have seen that many authors, as well as the Institute of International Law, favor the *lex loci contractus* of the drawer's contract. The Bills of Exchange Act, on the other hand, has adopted "the law of the place where the act is done." Massé<sup>305</sup> would distinguish between the necessity and the time of presentment, and would apply the *lex loci contractus* of each contract with regard to the necessity of presentment and the *lex loci contractus* of the drawer's contract as regards the time of presentment.

If a single law must be found, the author would prefer the law of the place of payment of the bill or note. But a comparative study of the law of Bills and Notes of England and the United States and that of the Convention of the Hague has not convinced him that a departure from principle is necessary. The two systems agree as to the necessity of presentment, except that the Bills of Exchange Act<sup>306</sup> and the Negotiable Instruments Law<sup>307</sup> require a presentment for acceptance in the infrequent case where the bill is drawn payable elsewhere than at the residence or place of business of the drawee. As regards the time within which presentment must be made, the Anglo-American law prescribes a reasonable time for bills payable at sight or after sight,<sup>308</sup> while that of the Convention of the Hague<sup>309</sup> lays down the definite period of six months. Thus, no serious differences exist between the two systems from which untoward results might be feared in consequence of the strict application of the doctrine of the independence of the different contracts.

The *lex loci contractus* of the different contracts also determines the question whether the holder can safely take a qualified acceptance.<sup>310</sup> The point involved is again whether the drawer or indorser has agreed to be responsible in such a case. The same law must control the right of recovery for non-acceptance.<sup>311</sup>

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<sup>305</sup> Vol. 1, p. 570.

<sup>306</sup> Sec. 39 (2).

<sup>307</sup> N. I. L. sec. 143 (3).

<sup>308</sup> N. I. L. sec. 144; B. E. A. sec. 40 (1).

<sup>309</sup> Art. 22, Uniform Law.

<sup>310</sup> 3 Diena, *Trattato*, 124; 2 Grünhut, 580; Ottolenghi, 199.

*Contra*: Champecommunal, 156, who applies the *lex domicilii* of the acceptor.

<sup>311</sup> *Aymar v. Sheldon* (1834, N. Y.) 12 Wend. 439, 27 Am. Dec. 137; Audinet,



Everything connected with the mode of presentment for acceptance is governed, on the other hand, by the law of the place where such presentment is to be made. The question whether an acceptance, once given, may be revoked is determined by the same law.<sup>312</sup> It will likewise decide, in the nature of things, the duty of the drawee to accept.<sup>313</sup>

## 6. PRESENTMENT FOR PAYMENT, PROTEST AND NOTICE.

Important differences continue to exist between Anglo-American law and that of the Hague Convention in regard to requirements of protest and notice. What is the law that should govern in this matter?

### *a. Necessity of Presentment, Protest and Notice.*

The law governing the necessity of presentment for acceptance has been discussed already. The requirement of protest and notice of dishonor in case of non-acceptance may be considered in this connection.

Three views have been expressed concerning the law governing the necessity of presentment for payment and the necessity of protest and notice upon dishonor, for non-acceptance or non-payment.

*First view.* These requirements are to be regarded as a part of the obligation of the contract of the different parties, that is, as conditions upon which they have agreed to pay. According to this view the *lex loci* of each contract should govern the question. This rule has the sanction of the French,<sup>314</sup> German,<sup>315</sup> and Italian<sup>316</sup> courts. It also represents the majority doctrine in this country<sup>317</sup> and is supported by the great weight of juristic opinion everywhere.<sup>318</sup>

*Second view.* The law of the place of payment controls as to all

620-621; Chrétien, 135; 3 Diena, *Trattato*, 133; Esperson, 67; 4 Lyon-Caen & Renault, 559-560; Minakuchi, 108; Ottolenghi, 200.

<sup>312</sup> Chrétien, 129; Ottolenghi, 197.

<sup>313</sup> 3 Diena, *Trattato*, 118-119; Gestoso y Acosta, 453-454; 4 Lyon-Caen & Renault, 558; Ottolenghi, 191; 4 Weiss, 460; Zavala, 186.

<sup>314</sup> Trib. de Com. de la Seine (Apr. 6, 1875) 3 Clunet, 103.

<sup>315</sup> Staub, art. 86, notes 5-9.

<sup>316</sup> Cass. Florence (Apr. 8, 1895) S. 1896, 4, 7.

<sup>317</sup> *Guernsey v. Imperial Bank of Canada* (1911) 188 Fed. 300; *Holbrook v. Vibbard* (1840, Ill.) 2 Seam. 465; *Allen v. Merchants Bank of New York* (1839, N. Y.) 22 Wend. 215, 34 Am. Dec. 289; *Amsinck v. Rogers* (1907) 189 N. Y. 252, 82 N. E. 134, 121 Am. St. Rep. 858, 12 L. R. A. N. S. 875; *Read v. Adams* (1821, Pa.) 6 Serg. & R. 356; *Warner v. Citizens Bank of Parker* (1894) 6 S. Dak. 152, 60 N. W. 746; *Douglas v. Bank of Commerce* (1896) 97 Tenn. 133, 36 S. W. 874; *Raymond v. Holmes* (1853) 11 Tex. 54.

<sup>318</sup> Asser, 210; Audinet, 618, 620; Bar, 677; Beauchet, 66; Bettelheim, 157-158, 162-163; Canstein, 182; Despagnet, 994-995; 3 Diena, *Trattato*, 169-170;



parties. This is the view of the Bills of Exchange Act. Section 72 (3) reads as follows:

"The duties of the holder with respect to presentment for acceptance or payment and the necessity for, or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act<sup>319</sup> is done or the bill is dishonoured."

With respect to protest, the view expressed in the above section was followed by some of the old authors, who regarded the question as relating to the performance of the original contract and as subject, therefore, to the law of the place of payment.<sup>320</sup> A few of the modern writers also favor the law of the place of payment.<sup>321</sup>

*Third view.* The law of the place of issue of the original contract governs as to all parties. This view is supported by the Institute of International Law as regards the necessity of presentment.<sup>322</sup>

In accordance with the doctrine of the independence of the different contracts upon bills and notes, there can be no doubt that on principle the law governing the different contracts must determine the conditions upon which each party has assumed liability. The necessity of presentment, protest and notice belongs clearly to the obligation of the contracts of the different parties, constituting the conditions upon which they have assumed liability, and must, therefore, be subject to the law of the place which controls the liability of the different parties. An abandonment of this rule in favor of the law of the place of payment or of the law of the place of issue of the original contract is tantamount to a rejection of the whole doctrine of the independence of the different contracts. The author has taken the position that there is no sufficient reason for a complete departure from this fundamental principle in the law of bills and notes. To his mind the convenience of complying with a single law instead of satisfying the law of different jurisdictions does not justify an overthrow of the traditional rule which regards the contracts of the drawer and of the indorsers as indemnity contracts performable in the state where they were made.

From the standpoint of practicability, the *lex loci contractus* of the several contracts is free from objection so far as the necessity of presentment, protest and notice is concerned. Each one of these acts is customarily done without regard to the legal necessity for so doing,

2 Diena, *Principi*, 315; 2 Grünhut, 581; 1 Massé, 569; 2 Meili, 347; 2 Meyer, 373; Ottolenghi, 366-367; Schäffner, 122; Valéry, 1288; Villalbi, 418.

<sup>319</sup> Westlake suggests that the word "acts" includes also "omissions." p. 330.

<sup>320</sup> 2 Brocher, 317-318; Pothier, *Traité du contrat de change*, no. 155.

<sup>321</sup> 4 Lyon-Caen & Renault, 563.

<sup>322</sup> 8 Annuaire, 122, resolution IV. See also Esperson, 41-42, 51.

so that a rule which might impose such a necessity by virtue of the *lex loci contractus* of a particular contract would constitute no real burden.

Shall the same law also determine the question whether some substitute for the customary protest may be allowed? Under the law of the Hague Convention each contracting state may prescribe that, with the assent of the holder, protests to be drawn within its territory may be replaced by a declaration dated and written upon the bill itself, signed by the drawee, and transcribed in a public register within the time fixed for protest.<sup>323</sup> This practice appears to exist in Italy and in Belgium. Some authors would apply the *lex loci contractus* of the different contracts.<sup>324</sup> Others are of opinion that the law of the place where the presentment is to be made should control.<sup>325</sup> According to this view the contract is interpreted as requiring only that the dishonor of the bill or note shall be indicated in some authentic manner, the mode of authentication being left to the law of the place where the act is to be done. The latter view is also that of the Institute of International Law.<sup>326</sup> The balance of convenience is in its favor.

*b. Time and Mode of Presentment, Protest and Notice.*

A. ANGLO-AMERICAN LAW.

(1) *English Law.*

Section 72 (3) of the Bills of Exchange Act provides that "the sufficiency of a protest or notice of dishonour . . . is determined by the law of the place where the act is done or the bill is dishonoured."

(2) *American Law.*

The law of the place of payment of the bill or note governs as to the time and form of presentment, protest and notice.<sup>327</sup> The cases are divided on the question whether the same law shall determine the time and mode of notification. The majority<sup>328</sup> of the cases hold that the law governing the different contracts should control. The

<sup>323</sup> Art. 9 of Convention.

<sup>324</sup> Champecommunal, 216.

<sup>325</sup> 3 Diena, *Trattato*, 175-176; 2 Grünhut, 578; Ottolenghi, 369.

<sup>326</sup> 8 *Annuaire*, 122. Resolution V provides that the law of the place where payment is to be made determines the mode of showing default of acceptance or payment, and the form of protest.

<sup>327</sup> *Holbrook v. Vibbard* (1840, Ill.) 2 Scam. 465; *Allen v. Merchants' Bank of New York* (1839, N. Y.) 22 Wend. 215; *Read v. Adams* (1821, Pa.) 6 Serg. & R. 356; *Douglas v. Bank of Commerce* (1896) 97 Tenn. 133, 36 S. W. 874.

<sup>328</sup> *Thorp v. Craig* (1860) 10 Iowa, 461; *Snow v. Perkins* (1851) 2 Mich. 238; *Aymar v. Sheldon* (1834, N. Y.) 12 Wend. 439, 27 Am. Dec. 137; *Raymond v. Holmes* (1853) 11 Tex. 55.

more recent cases<sup>320</sup> apply the law of the place of payment of the bill or note.

#### B. CONTINENTAL LAW.

##### (1) *German Law.*

Article 86 of the German Bills of Exchange Law provides expressly:

"As regards the form of the proceedings for the exercise or maintenance of exchange rights on a bill at a foreign place, the local law in force decides."

This section is held applicable to the form and sufficiency of notice.<sup>330</sup>

##### (2) *Italian Law.*

Article 58 of the Commercial Code enacts as follows:

"The form and the essential requisites of commercial obligations, the form of the acts that are necessary for the exercise and the preservation of rights arising from such obligations or from their performance, and the effect of the acts themselves, are governed, respectively, by the laws and usages of the place where the obligations are created and where said acts are done or performed, save in every case the exception laid down in article 9 of the Preliminary Dispositions of the Civil Code with respect to those subject to the same national law."

#### C. LATIN-AMERICAN LAW.

Article 26 of the Convention on Commercial Law concluded at the Congress of Montevideo provides:

"The form of the drawing, indorsement, acceptance, and protest of a bill of exchange shall be subject to the law of the place where such acts respectively took place."<sup>331</sup>

#### D. JAPANESE LAW.

Article 126 of the Introductory Act to the Japanese Commercial Code follows article 86 of the German Bills of Exchange Law.<sup>332</sup>

#### E. CONVENTION OF THE HAGUE.

Article 76 of the Uniform Law provides:

"The form and the time limits of the protest, as well as the form of other acts necessary for the exercise or preservation of rights with respect to bills of exchange, are regulated by the laws of the state within whose territory the protest must be drawn up or the act in question done."

<sup>320</sup> *Guernsey v. Imperial Bank of Canada* (1911) 188 Fed. 300; *Gleason v. Thayer* (1913) 87 Conn. 248, 87 Atl. 790; *Wooley v. Lyon* (1886) 117 Ill. 248, 6 N. E. 885, 57 Am. Rep. 867.

<sup>330</sup> Bettelheim, 191; 2 Grünhut, 577; 1 Meyer, 659; Staub, art. 86, n. 3.

<sup>331</sup> See also art. 738, Commercial Code of Argentina.

<sup>332</sup> Minakuchi, 122.



## F. DISCUSSION.

All courts and authors as well as legislative provisions agree that the law of the place where the presentment and protest is to be made should determine the formalities with which such acts should be executed. All parties, including the drawer and indorser, will become bound, to that extent, in accordance with the law of that state.<sup>333</sup> This law clearly controls the manner of presentment and protest. It determines, for example, the persons by whom presentment and protest may be made; the place where presentment may be made; the time of day when such presentment may be made; and whether a "noting" on the day of maturity is sufficient. We have seen in connection with the maturity of bills and notes that the precise day of payment, where the day of maturity falls on a Sunday or a legal holiday, or where days of grace are allowed, is ascertained with reference to the law of the place of payment. The same rule would hold, no doubt, where the law of the place of payment does not recognize days of grace, but permits presentment and protest on one of the two business days following the day of maturity as is the case under the Convention of the Hague.<sup>334</sup>

There is no harmony, however, concerning the law governing the mode of notification, as to which wide differences exist between the Anglo-American law and that of the Hague Convention.<sup>335</sup>

Which rule should be adopted by the uniform act? The Bills of Exchange Act accepts the law of the place of payment of the bill or note. In so doing it follows the decisions of *Rothschild v. Currie*<sup>336</sup> and *Hirschfeld v. Smith*.<sup>337</sup> The reasoning of the former case is based upon the theory that the drawer and indorsers agree to pay at the place of payment of the bill or note. This is contrary to the American law, the general view, and must be rejected on that account.

The case of *Hirschfeld v. Smith*, however, advanced a second reason in support of the law of the place of payment. Erle, C. J., says:<sup>338</sup>

"If the reason assigned in that case (*Rothschild v. Currie*) be not now adopted, and if the contract of an indorser in England of a bill

<sup>333</sup> Audinet, 619; Bar, 679; Bettelheim, 191 *et seq*; Chrétien, 91; Despagne, 994; 3 Dena, *Trattato*, 172; Gestoso y Acosta, 454; 2 Meili, 344; 2 Meyer, 375; 2 Nouguier, 195; Ottolenghi, 371; Restrepo-Hernandez, 459; Staub, art. 86, n. 1, 3; Surville & Arthuys, 729, 735; Valéry, 1287-1288; Villalbi, 418; 4 Weiss, 457; Zavala, 187.

<sup>334</sup> Art. 37, Uniform Law.

<sup>335</sup> See *supra*, pp. 43-44.

<sup>336</sup> (1841) 1 Q. B. 43, 10 L. J. Q. B. 77.

<sup>337</sup> (1866) L. R. 1 C. P. 340, 35 L. J. C. P. 137.

<sup>338</sup> (1866) L. R. 1 C. P. 340, 352.

accepted payable in France be held to be a contract governed by the law of England, and so the holder be not entitled to sue in England such an indorser unless he has given due notice of dishonour according to the law of England, then the question is, what notice, under such circumstances, amounts to due notice? . . . The indorser of a bill accepted payable in France, promises to pay in the event of dishonour in France, and notice thereof. By his contract he must be taken to know the law of France, relating to the dishonour of bills; and notice of dishonour is a portion of that law. Then, although his contract is regulated by the law of England relating to indorsement, and although he may not be liable unless reasonable notice of dishonour has been sent to him, yet the notice of dishonour according to the law of France may be, and we think ought to be, deemed reasonable notice according to the law of England, and be sufficient in England to entitle the plaintiff to recover according to that law.

"It is reasonable to hold that the foreign holder should have time to make good his right of recourse against all the parties to the bill, in whatever country they may be. Here the holder was a Frenchman, in France. The indorsement to him was by the plaintiff, a Frenchman, in France. The indorsement to the plaintiff was by the defendant, an Englishman in England; and the indorsement to that Englishman by Lion, the payee, may have been in any country. The inconvenience would be great if the holder was bound to know the place of each indorsement, and the law of that place relating to notice of dishonour, and to give notice accordingly, on pain, in case of mistake, of losing his remedy; whereas there would be great convenience to the holder if notice valid according to the law of the place should be held to be reasonable notice for each of the countries of each of the parties, unless an exceptional case should give occasion for an exception."

In the opinion of the learned chief justice, therefore, even if the indorser's contract is subject to the law of the place where he entered into the contract, the indorser must be regarded as having contracted, as regards the sufficiency of notice, with reference to the law of the place where the bill is payable. The same view is strongly advocated by a federal case in which Judge Sanborn uses the following language:<sup>339</sup>

"The rule that the manner of giving and the sufficiency of the notice of dishonor are governed by the law of the place of indorsement, is impractical, unfair, and unjust, because the notary at the place of payment must give the notice, and it is often impossible in the time allowed to him by the law for him to find out where each indorsement was made and what the law of the place of each indorsement is upon the subject of notice of dishonor. On the other hand, commercial paper shows on its face where it is payable. Each indorser, when it is presented to him for his indorsement, has time and opportunity before he signs it, to learn where it is payable, to ascertain if he desires the law of that place, and to decide for himself with full

<sup>339</sup> *Guernsey v. Imperial Bank of Canada* (1911) 188 Fed. 300, 302.



knowledge and upon due consideration whether or not he will agree to pay the amount specified therein if the maker fails to do so and the paper is presented, the payment is demanded, the protest is made, and the notice of dishonor is given according to that law. In the decisions upon this question there is a direct and irreconcilable conflict. The established rule in England, the rule in Illinois, and the stronger and better reasons are that, where an indorsement is made in one jurisdiction, and the commercial paper is payable in another, the manner of giving notice of dishonor and the sufficiency thereof are governed by the law of the place where the paper is payable."

The majority view in this country looks upon the sufficiency of notice as a condition upon which the liability of the drawer and indorser is to attach and which is, therefore, subject to the law governing their respective contracts. The foreign writers are divided on this point. Some distinguish between the mode of notification and the time within which notice must be given. They would apply the *lex loci actus* to the determination of the mode of notification, but the law of the place of the drawer's or indorser's contract with respect to the time within which notice must be given.<sup>340</sup> Of the authors who do not make the above distinction, some favor the law of the place governing the contract of the drawer or indorser.<sup>341</sup> Most prefer the *lex loci actus*.<sup>342</sup> From the standpoint of strict theory, the mode of notification differs from the mode of presentment and protest in that it relates not so much to the manner of doing the prescribed act as to its sufficiency as notice to the drawer and indorser. It therefore affects the conditions upon which liability was assumed by them. It must be admitted, however, that the difference between the conditions of liability and matters affecting the mode of performance is ultimately one of degree. The author is strongly of the opinion that the considerations of convenience advanced by Chief Justice Erle and Judge Sanborn are entitled to the greatest weight, and that the law of the place of payment, which is accepted by the law of England and Germany and by the Institute of

<sup>340</sup> 3 Diena, *Trattato*, 199-200; Ottolenghi, 455-456. Minakuchi (p. 124) would apply the law of the place of payment of the bill as regards the time within which the holder of the instrument at the time of maturity must give notice, and the law of the place where each prior party received notice as regards the time within which such party must give notice.

<sup>341</sup> Bar, 1 Ehrenberg's *Handbuch*, 389; 4 Weiss, 463. Bettelheim (p. 191) contends that the law of the actual domicile of the party to whom notice is to be given should control. Bar (p. 677) states that the law of the place where each obligation is assumed should govern as to "what is timeous notice of dishonor" but he does not express himself clearly concerning the form in which the notice must be given. See p. 677, n. 52.

<sup>342</sup> Asser, 210; 2 Grünhut, 578 and n. 30; 2 Meili, 346; 1 Meyer, 659; 2 Meyer, 376.



International Law, should be approved by the uniform act. The other view, which makes it incumbent upon each holder to notify a party whom he seeks to charge with legal liability in strict accordance with the law governing the latter's contract, is unreasonable. So far as the drawer and indorser are concerned, the suggested rule would not operate more to their disadvantage than the rule now prevailing in Anglo-American law which extends the liability of the drawer or indorser in case of delay in giving notice of dishonor when such delay is caused by circumstances beyond the control of the holder and is not imputable to his default, misconduct or negligence.<sup>343</sup>

It follows that if the last holder is authorized, according to the law of the place of payment, to notify all prior parties, and he does so in the manner prescribed by that law, their liability will be fixed. But suppose that the holder of the instrument at the time of maturity notifies only his immediate indorser. Which law is to determine the time and manner of notice to be given by such indorser to the antecedent parties? The Bills of Exchange Act, section 72 (3), appears to say that the sufficiency of notice by *any* holder is governed by the law of the place where the bill is dishonored. But this would be opposed to the English law as stated by the Court of Appeal in *Horne v. Rouquette*.<sup>344</sup> Westlake<sup>345</sup> believes that this subdivision should be applied only to the last holder, and that in all other cases, in conformity with the general rule governing the interpretation of the drawing and the indorsement,<sup>346</sup> the *lex loci contractus* of the drawer's or indorser's contract must be satisfied. Daniel,<sup>347</sup> on the other hand, is of the opinion that each intermediate indorser could notify any prior indorser or the drawer, in accordance with the law of his own land. The most convenient rule would no doubt be to allow each party to give notice in the manner prescribed by the law of the state where such notice is to be given.<sup>348</sup> This appears to be the meaning of resolution 5, paragraph 2, of the Institute of International Law.<sup>349</sup> The author would recommend that the uniform act adopt this rule.

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<sup>343</sup> N. I. L. sec. 115; B. E. A. sec. 50 (1).

<sup>344</sup> (1878, C. A.) L. R. 3 Q. B. D. 514.

<sup>345</sup> p. 321.

<sup>346</sup> B. E. A. sec. 72 (2).

<sup>347</sup> p. 1093.

<sup>348</sup> So apparently Minakuchi, 123.

<sup>349</sup> 8 Annuaire, 122. The resolution provides:

“The notices to be given to the guarantors for the preservation of the rights of recourse in case of default of acceptance of payment, and the time within which such notices must be given, are governed by the law of the country from which such notices must be sent.”

## 7. VIS MAJOR—MORATORY LAWS.

*a. Vis Major.*

In Anglo-American law any delay in presentment, protest and notice is excused<sup>350</sup> when caused by circumstances beyond the control of the holder and not imputable to his fault, misconduct or negligence. Such acts are excused altogether if, after the exercise of reasonable diligence, they cannot be made.<sup>351</sup> The Convention of the Hague allows such an excuse only in case presentment or protest is prevented by an insuperable obstacle (*vis major*).<sup>352</sup> Matters purely personal to the holder or to the person intrusted with the presentment of the instrument or with the drawing of the protest are not regarded as constituting cases of *vis major*.

Which is the law governing the question whether a delay in presentment, protest or notice is excusable?

Most authors<sup>353</sup> regard the question as relating to the obligation assumed by the drawer and indorser and as subject, therefore, to the *lex loci contractus* of their respective contracts. Others<sup>354</sup> are of the opinion that any delay in presentment, protest or notice caused by *vis major* should be controlled by the law of the place of payment of the bill or note. The Institute of International Law considers the law of the place of the original issue of the instrument to be the appropriate law.<sup>355</sup>

The principle of the independence of the different contracts on a bill or note makes it impossible to accept the view recommended by the Institute of International Law, for there is no reasonable basis for the assumption that the different parties contracted with reference to the *lex loci contractus* of the drawer's contract as regards the defence now under consideration. The defences which each party can interpose in an action against him are controlled by the *lex loci contractus* of the individual contract, except when they relate to the interpretation of the original contract or to the mode of performance. As the defence of *vis major* has no connection with the interpretation of the original

<sup>350</sup> N. I. L. secs. 81, 113, 147, 159; B. E. A. secs. 46 (1), 50 (1), 39 (4), 51 (9).

<sup>351</sup> N. I. L. secs. 82 (1), 112, 148 (2), 159; B. E. A. secs. 46 (2) (a), 50 (2) (a), 41 (2) (b), 51 (9).

<sup>352</sup> Art. 53, Uniform Law. The German Bills of Exchange Law does not excuse any delay on account of *vis major*. Staub, art. 41, n. 3.

<sup>353</sup> Bar, 684; Bettelheim, 211; Champecommunal, 218; Chrétien, 184-185; Despagnet, 996; Gestoso y Acosta, 735; 4 Lyon-Caen & Renault, 567; Ottolenghi, 430; Surville & Arthuys, 735; 4 Weiss, 463-464.

<sup>354</sup> 3 Diena, *Trattato*, 185; 2 Jitta, 139; 1 Massé, 569-570.

<sup>355</sup> 8 Annuaire, 122, resolution VI.

bill or note, it will necessarily be controlled by the *lex loci contractus* of each contract unless it can be said to belong to the incidents of performance.

A party may indorse a bill or note in a country which does not excuse delay in presentment, protest or notice on the ground of *vis major*. Such an indorser naturally assumes liability on that basis. It is a condition of his contract which should be respected and which must be governed by the *lex loci contractus*. If the Uniform Law of the Convention of the Hague becomes law in the countries not belonging to the Anglo-American group, the defence of *vis major* will be allowed everywhere. The only question then remaining will be whether the law of the place of payment of the bill or note should define the conditions under which *vis major* is deemed to exist. Suppose a bill of exchange payable in Paris is indorsed in New York. The Paris notary to whom the bill is intrusted for presentment and protest in case of non-payment suddenly becomes ill so that these acts are not done within the ordinary time prescribed by law. Sickness is a matter purely personal to the notary and would not constitute an excuse for the delay under the Uniform Law of the Hague Convention. According to American law the delay might be found to be reasonable and therefore excusable. Should the New York indorser be held?

Suppose that a bill payable in New York is indorsed in Paris and that a similar delay occurs in the presentment and protest of the bill. Can the French indorser be held in this country? Not if the *lex loci contractus* controls. But how is the American holder or the American notary to know the various definitions of *vis major* in the laws of the different countries? Having acted as a reasonable man in accordance with the usages obtaining at the place of payment, why should his conduct not be regarded as sufficient to meet the requirements of the law? In the opinion of the author there is no sufficient reason why an alternative rule should govern the determination of what constitutes *vis major*. A choice must therefore be made between the *lex loci contractus* of each contract and the law of the place of payment of the bill or note. On grounds of convenience the latter should be preferred. Presentment and protest may be made in the mode that is customary at the place of payment, and notice of dishonor is sufficient, both as regards time and mode, if it complies with the law of the place where such notice is to be given. For a like reason, it would seem, the excusability of any delay in the matter of presentment, protest or notice caused by extraordinary conditions or circumstances should be determined by the law where such acts must be done. Business should



be allowed to be carried on in the usual mode and the conduct of people should be measured by the standard that is in vogue in the place where they act. The holder of a bill or note should be required at his peril to come up to this standard of diligence; if he fails to act in the manner that the *lex loci actus* demands, he should bear the consequences of his negligence without being allowed to take advantage of a different standard of diligence set up by the law governing the contract of the drawer or indorser.

The defence of *vis major* is not recognized in the existing law of all countries.<sup>356</sup> In some no delay in presentment or protest, though caused by an act of God, is excused. Whether the defence of *vis major* is ever available with respect to any particular party must be governed in the nature of things by the law governing his contract; it is an essential condition of that contract. What constitutes *vis major*—that is, what events or conditions may be regarded as sufficient to excuse a delay in the presentment, protest or notice—should be controlled, on the other hand, by the law of the place where such acts must be done.

#### *b. Moratory Laws.*<sup>357</sup>

Does the rule governing the defence of *vis major* apply where by reason of a great public necessity or calamity the time of payment or the time for protesting the instrument is postponed by legislation? This question has been much discussed as a result of the French moratory legislation during the Franco-Prussian war. There can be no doubt concerning the validity of such legislation as regards persons who were subject to French law. Most of the countries upheld the French legislation even with respect to foreign indorsers.<sup>358</sup> A con-

<sup>356</sup> *Supra*, p. 44.

<sup>357</sup> The author has discussed this topic more fully in an article, entitled "Moratory legislation and the conflict of laws," 28 Yale Law Journal, Feb., 1919.

<sup>358</sup> England: *Rouquette v. Overmann* (1875) L. R. 10 Q. B. 525; *Allatini & Co. v. Abbott* (1872) 26 L. T. Rep. 746. Austria: OGH (May 28 and June 13, 1872) Krall, nos. 214, 215, 216. See also Austro-Hungarian Court at Constantinople (Apr. 15, 1872) 1 Clunet, 100. Belgium: Brussels (Apr. 29, 1872) 1 Clunet, 209; Ghent (May 15, 1873) 1 Clunet, 213. France: App. Aix (Apr. 9, 1872) D. 1872, 2, 202. Italy: Cass. Turin (Mar. 6, 1872) Annali, 1872, 1, 107; Cass. Florence (Jan. 16, 1873) Annali, 1873, 1, 47; Cass. Turin (July 30, 1873) Monitore, 1873, 893; Cass. Turin (May 20, 1879) Annali, 1879, 1, 405. Norway: Sup. Court (Jan. 16, 1875) 21 Goldschmidt's Zeitschrift, 580. Sweden: Sup. Court of Sweden (May 14, 1873) 1 Clunet, 149. Switzerland: Court of Geneva (Mar. 25, 1872) Journal de Genève, Apr. 10, 1872, n. 84; S. 1872, 2, 217.

A few courts, however, reached a different conclusion, notably the Supreme Commercial Court of the German Bund (Feb. 21, 1871) 1 ROHG, 288; see also

siderable literature has arisen upon the subject. Much of the controversy arose from the nature of the specific legislation involved, which postponed the time of payment of bills payable in France from month to month for a period aggregating eleven months. No attempt will be made here to discuss the French legislation. The problem can be considered only in its general aspects. The legislation may take one of several forms: (1) It may prohibit the presentment and protest of bills and notes for a specified time; (2) It may postpone the time for presentment and protest; (3) It may postpone the maturity of the bills and notes.

Where the moratory legislation takes the form first suggested no difficulty can arise from the standpoint of the conflict of laws in countries recognizing the defence of *vis major*. Presentment and protest being forbidden, the delay caused by such legislation would be excused. However, in countries whose law of bills and notes does not tolerate any delay in presentment or protest, whatever the cause of the

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decision by same court (Feb. 9, 1872) 5 ROHG, 707, and of the Commercial Court of Zurich (May 22, 1871) 22 Zeitschrift für Kunde und Fortbildung der zürcherischen Rechtspflege 371.

*Rouquette v. Overmann* (1875) L. R. 10 Q. B. 525, gives three reasons for the application of the law of the place of payment of a bill or note. *First*. The question affects the "incidents of presentment and payment" and is therefore subject to the law of the place of payment. *Second*. The indorser's contract calls for performance at the place of payment of the bill or note and is controlled therefore by that law. *Third*. A contrary doctrine, which might allow recourse against the drawer and indorsers before the obligation of the principal debtor has become due, would constitute a startling anomaly.

In an earlier part of this work it has been shown that the contract of the drawer and indorser is one of indemnity which is to be performed in the place where it is entered into and not at the place of payment of the bill or note. The second ground set forth in the above opinion cannot, therefore, be accepted. The third argument, namely, that the application of the *lex loci contractus* of the different parties would lead to the anomaly that recourse might be taken against the drawer and the indorsers before the obligation of the principal debtor has become due, is of no conclusive character, as anomalies may, in the nature of things, result from such legislation. Whether the reason first advanced—namely, that the question affects the incidents of presentment and payment—can be accepted will be shown below.

In the recent New York case of *Taylor v. Kouchakji* (1916) 56 N. Y. L. J. 813, a bill of exchange was drawn and accepted in Paris payable in New York City. Both drawer and acceptor were French subjects. In an action brought against the acceptor in New York, it was held that the latter might set up in defence a moratorium decree of the French government extending the time of payment.

In regard to the legislation of the present war see also *Re Francke & Rasch* (1918) 87 L. J. R. 273, 34 T. L. R. 287.



delay, such legislation would not be recognized unless an exception were made in favor of moratory legislation in general.<sup>359</sup>

If the legislation, taking the second form above suggested, purports to postpone the time for presentment and protest without affecting the date of maturity, a difference of opinion may well exist even in countries like England and the United States which excuse any reasonable delay in presentment, protest or notice. In support of such legislation with respect to drawers or indorsers who contract in a different country the rules applicable to days of grace may be invoked. The jurists are generally agreed that days of grace may be allowed by the law of the place of payment of the bill or note subsequent to the time of the making of the contract of the drawer or indorser,<sup>360</sup> and that such legislation should be recognized as binding upon the foreign drawer or indorser. The day of maturity may be deemed unaffected by such legislation so that in reality there has been only "a postponement of the day on which payment can be demanded."<sup>361</sup> Staub stood out for a long time against the above rule in the matter of days of grace. He contended that the day of maturity was in effect changed by such legislation, which should not therefore be recognized with respect to drawers or indorsers who became parties to the instrument in a foreign country. He later abandoned this view, however.<sup>362</sup> The question would remain whether a distinction should not be made between days of grace and the postponement of the time for presentment and protest under moratory legislation. Bar maintains that such a distinction should be made. "It is merely playing with words," he says,<sup>363</sup> "to say that days of grace may just as well last for seven or eleven months as for two to ten days." So far as the holder is concerned it is one thing to make him wait a few days before he can get his money and quite a different thing to make him wait many months. Moreover, inasmuch as the presentment for payment and protest is not prohibited, it may be asked why should the holder, if he is desirous of holding a foreign drawer or indorser, not present the instrument for payment on the day of its maturity and in case of dishonor give notice thereof to such foreign party?

If the moratory legislation purports to postpone the date of maturity of bills and notes it is still more difficult to support such legisla-

<sup>359</sup> To the effect that the law of the place governing the contracts of the different parties controls, see Bettelheim, 218; Canstein, 182-183; Fick, 111; 2 Grünhut, 583; Lehmann, 132; Minakuchi, 112; Staub, art. 86, n. 9.

<sup>360</sup> Bar, 683, n.; Chrétien, 192; 4 Lyon-Caen & Renault, 568.

<sup>361</sup> 3 Diena, *Trattato*, 189; 2 *Principi*, 316-317.

<sup>362</sup> Staub-Stranz, art. 86, n. 1.

<sup>363</sup> p. 683.



tion with respect to foreign drawers and indorsers. Their contract being governed by the law of the place in which they respectively entered into the same, and not by the law of the place of payment of the bill or note, there is no principle except that of broad policy upon which such a change in the terms of their contracts can be justified. Some writers<sup>364</sup> contend that such legislation may be sustained if the *lex loci contractus* recognizes the defence of *vis major* on the theory that such legislation constitutes, so far as the holder is concerned, a case of *vis major*. This contention is sound if a postponement of the maturity necessarily implies a prohibition of presentment and protest on the day of original maturity. Diena<sup>365</sup> would recognize such moratory legislation with respect to foreign drawers and indorsers if interest is allowed from the original date of maturity. According to this learned writer, the substance of the contract would not in reality be affected by such legislation, but only the time and mode of its performance. It is evident, however, that the allowance or non-allowance of interest cannot determine the question so far as the foreign drawers and indorsers are concerned. Even if it be assumed that the interest allowed gives to the holder a substantial equivalent for the loss of the money during the time of the postponement of the date of maturity, it provides no compensation whatever to the drawer and indorser for the loss resulting from the uncertainty whether or not they will be called upon to pay.

Jitta<sup>366</sup> would determine the problem, irrespective of the form which the particular legislation may have taken, in accordance with the "reasonable interpretation of the confidence inspired." He would ask: "Is the happening of a moratorium so extraordinary that serious and reasonable men would not have contemplated such a contingency?" and he would answer the question in the negative. The author cannot agree that the passing of moratory legislation is an event whose possibility the drawer or indorser should have contemplated. The events which give rise to moratory legislation are so sudden and of such an extraordinary character that they cannot possibly be foreseen.

The author agrees, however, with Jitta's conclusion. Moratory legislation enacted at the place of payment should be recognized with respect to drawers and indorsers contracting in another state, but the ultimate basis of such recognition is *policy*. That such recognition is

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<sup>364</sup> Bar, 1 Ehrenberg's *Handbuch*, 396; Champcommunal, 250-251; Chrétien, 193; 4 Lyon-Caen & Renault, 568.

<sup>365</sup> 3 Diena, *Trattato*, 189-190.

<sup>366</sup> Vol. 2, p. 140.

demanding by considerations of policy cannot admit of doubt. As moratory legislation is passed generally under conditions of overwhelming necessity, a failure to give effect to such legislation would be regarded by the people of the enacting state as the expression of an unfriendly attitude, which would lead to friction between the countries, instead of promoting harmony and international good-will. If this country were compelled to pass moratory legislation, we should expect other nations to respect it, and we must be willing, by way of reciprocity, to respect their legislation. While the passage of moratory legislation may impose a certain burden upon American citizens, greater injury might result if, but for such legislation, widespread insolvency would have followed.

Juridically the result may be explained in the following manner: A proper analysis of the contract of the drawer or indorser shows that it has no fixed or invariable content. Different legal consequences may attach to the signature of a person who has drawn or indorsed in the same state or country instruments which are identical in all respects except the place of payment. We have seen that for certain purposes the law of the forum incorporates the law of the place of performance, and it may do so as regards moratory legislation. Correctly speaking, the drawer or indorser engages that he will indemnify the holder in the event of *dishonor* by the drawee or acceptor. The duty of the drawee or acceptor to pay is controlled manifestly by the *lex loci contractus et solutionis*, and this is true although the original date of maturity was postponed by retrospective legislation validly enacted at the place of payment. As the instrument is not due with respect to the drawee or acceptor until the expiration of the moratorium granted, there can be of course before that time no dishonor by such party. The time of performance for the drawer and indorser necessarily coincides with the due date of the acceptor's obligation. A postponement of the due date as regards the drawee or acceptor carries with it therefore a corresponding extension of the obligation of the drawer and indorser.

There is no reasonable basis for the assumption that all parties contracted with reference to the *lex loci contractus* of the original contract; for that reason the recommendation of the Institute of International Law, which favors that rule,<sup>367</sup> must be disapproved.

## 8. PAYMENT.

There is perfect agreement in the law of the different countries concerning the rule governing the mode of payment. In the nature

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<sup>367</sup> 8 Annuaire, 122, resolution VI.



of things, the law of the place of payment controls. Unless the bill or note specifies a particular coin, the law of the place of payment will determine the kind of currency in which the instrument may be paid.<sup>368</sup>

This rule is deemed to control also certain other matters relating to payment; for example, whether a party liable on a bill or note may discharge his liability by payment of the amount into court,<sup>369</sup> and when payment through a clearing house<sup>370</sup> becomes irrevocable.

Shall the same rule be applied where the amount of a bill or note is indicated in a kind of money having the same designation in the country of issue and in the country where the payment is to be made, but having different values in the two countries? Most authors<sup>371</sup> answer the question in the affirmative. Others<sup>372</sup> maintain that the law of the place of payment controls only the *mode* of payment, and that the question under consideration relates to the interpretation of the principal contract. The law of the place of payment is adopted as the governing law by the Convention of the Hague,<sup>373</sup> and this law would appear to be entitled to preference. As the amount is of necessity "payable at the place of payment," it would seem as though the money current at that place must have been intended by the parties in the absence of a clear expression to the contrary. As all parties to the instrument must be regarded as having contracted upon this basis, the question is unaffected by the *lex loci contractus* of the drawer's or indorser's contract.

Under the Convention of the Hague the holder of a bill of exchange must accept partial payment.<sup>374</sup> According to Anglo-American law he is not required to do so. It has been suggested that the duty of the holder in this regard should be regarded as relating not to the

<sup>368</sup> Audinet, 616; Bettelheim, 178; 2 Diena, *Principi*, 253-254; Gestoso y Acosta, 454; 2 Jitta, 110; 4 Lyon-Caen & Renault, 564; 2 Nougier, no. 1431; Ottolenghi, 305-306; Restropo-Hernandez, 462; Surville & Arthuys, 731; Valéry, 1287; 4 Weiss, 466.

Many authors would apply the same rule even though paper money has been made legal tender since the formation of the contract. Chrétien, 159; Ottolenghi, 313-314; Surville & Arthuys, 733.

<sup>369</sup> Bettelheim, 173; 3 Diena, *Trattato*, 154; 2 Grünhut, 585; 4 Lyon-Caen & Renault, 563; Surville & Arthuys, 730.

<sup>370</sup> 4 Lyon-Caen & Renault, 563.

<sup>371</sup> Bar, 674; Esperson, 97; 1 Fiore, *Le droit*, 223; 1 Massé, 546; 2 Rolin, 543.

<sup>372</sup> Champcommunal, 208; Chrétien, 153; 4 Lyon-Caen & Renault, 262.

<sup>373</sup> Art. 40, par. 2, Uniform Law.

<sup>374</sup> Art. 38, par. 2, Uniform Law. The Convention permits each contracting state, however, to authorize the holder to refuse partial payment of instruments payable within its own territory. Art. 8 of Convention.



mode of payment but to the obligation of the different contracts, and that the question should therefore be governed by the *lex loci contractus* of each contract.<sup>375</sup> This view would lead, however, to totally impracticable results. It must be rejected, if for no other reason, on that ground alone. The holder must either accept part payment or not accept it, and he is not in a position to comply with conflicting laws. One law must control, and inasmuch as the question relates to payment, it is logical to adopt the law of the place of payment.<sup>376</sup>

## 9. TIME WITHIN WHICH RECOURSE MUST BE TAKEN.

### A. ANGLO-AMERICAN LAW.

Anglo-American law regards the time within which suit must be brought for breach of contract on principle as a matter of procedure and as subject to the *lex fori*.<sup>377</sup> Where under the law controlling the substance of the contract the lapse of time has not merely barred the remedy but has discharged the obligation<sup>378</sup> there is authority for the statement that no suit will lie although the statute of limitations of the forum has not completely run.<sup>379</sup> In a number of states the

<sup>375</sup> Bettelheim, 173; 3 Diena, *Trattato*, 156; Ottolenghi, 302-304.

<sup>376</sup> Chrétien, 173; Esperson, 107.

<sup>377</sup> Dicey, rule 193; Minor, 522; Story, 793; Westlake, 328; Wharton, 1244-1245.

<sup>378</sup> Under the Wisconsin statute of limitations the debt itself is destroyed by lapse of time when both parties have their domicile in the state. *Brown v. Parker* (1871) 28 Wis. 21, 29. See also *Arp v. Allis-Chalmers Co.* (1907) 130 Wis. 454, 110 N. W. 386.

Art. 83 of the German Exchange Law provides as follows:

"If the obligation of the drawer or acceptor is extinguished by exchange law as a result of prescription or as a result of the fact that the acts prescribed by law for the maintenance of the right of recourse have not taken place, such parties shall remain liable to the holder of the bill of exchange only so far as they would be enriched at his expense. Such a claim does not lie against the indorsers whose liability according to exchange law is extinguished."

Some authors contend that the prescription referred to in the above article operates as a discharge of the contract. 2 Grünhut, 542; 1 Meyer, 518. The Reichsgericht, however, appears to regard it as an ordinary prescription (*Anspruchsverjährung*) in the sense in which that term is used in the Civil Code: (Jan. 24, 1891) 27 R G, 78. See also Staub, art. 77, n. 3. According to the Civil Code, prescription does not discharge the obligation; but this does not signify that the institute of prescription is procedural in its character. Quite the contrary is true. The defence to which the prescription of the German Civil Code gives rise can be asserted out of court as well as in court. In order to emphasize its substantive character the term used is *Anspruchsverjährung* instead of *Klageverjährung*. Sahm, 49 Jhering's *Jahrbücher*, 59 *et seq.*; Treutler, 9 *et seq.*

Concerning the nature of prescription, see also Baudry-Lacantinérie & Tissier, *De la prescription* (3d ed.) 90-91.

<sup>379</sup> *Huber v. Steiner* (1835) 2 Bing. N. Cas. 202, 211; *Don v. Lippmann* (1837)

rule of the common law has been modified by statutes which deny the plaintiff a right of action where his remedy is barred by the law of the state governing the obligation of the contract in general.

## B. CONTINENTAL LAW.

### (1) *French Law.*

The French law makes it incumbent upon the holder of a bill of exchange, as a condition of his right of recourse, to institute an action against the drawer or indorser within a brief period of time.<sup>380</sup> Upon principle it would seem that a provision of this sort, like all other conditions of the right of recourse, should be subject to the law of the place where the contract of the drawer or indorser was entered into. This is the view of most French writers.<sup>381</sup> As regards drawers and indorsers residing in France, article 166 of the Commercial Code regulates the periods of time within which suit must be brought on bills of exchange drawn in France on foreign countries. Logically, it would follow that in regard to similar provisions in a foreign law, such foreign law should control. The law of the forum appears to be imposed, however, by the express provisions of article 160 of the Commercial Code.<sup>382</sup>

So far as the time within which suit must be brought is not a condition of recourse, the general rule of the conflict of laws governing prescription controls. The French courts are divided and support either the law of the forum,<sup>383</sup> the law of the place where the contract was entered into,<sup>384</sup> or the law of the place where the contract was to be performed.<sup>385</sup>

5 Cl. & F. 1; *Canadian Pac. R. Co. v. Johnston* (1894) 61 Fed. 738; Dicey, 710; Minor, 523; Story, 804; Westlake, 330; Wharton, 1256.

<sup>380</sup> See *supra*, p. 43.

<sup>381</sup> Audinet, 619; Champcommunal, 255; Despagne, 999; 4 Lyon-Caen & Renault, no. 654; 1 Massé, no. 630; 4 Weiss, 467.

Surville & Arthuys (p. 737) would apply the law of the place where the debtor has his domicile at the time the obligation was entered into. Audinet (pp. 619-620) would not allow a suit to be brought, however, if recourse was not taken within the time prescribed by the law of the forum. Chrétien (no. 74) favors the exclusive application of the *lex fori*.

<sup>382</sup> Audinet, 620; 4 Lyon-Caen & Renault, no. 654.

<sup>383</sup> Cass. (Jan. 13, 1869) D. 1869, 1, 135; App. Besançon (Jan. 11, 1882) D. 1882, 2, 211; Trib. civ. de la Seine (Nov. 28, 1891) 19 Clunet, 712; Trib. civ. de la Seine (Dec. 11, 1893) 21 Clunet, 145; App. Paris (Nov. 15, 1906) 3 Darras, 756.

<sup>384</sup> Trib. de com. de Marseilles (Oct. 25, 1880) 8 Clunet, 259; Cour de Bordeaux (Mar. 1, 1889) D. 1890, 2, 90; Trib. civ. de la Seine (Nov. 14, 1890) 19 Clunet, 987; Trib. de com. de Bordeaux (Apr. 27, 1891) 19 Clunet, 1004; Trib. civ. de la Seine (Apr. 30, 1904) 34 Clunet, 417; Trib. civ. de Marseilles (Oct. 31, 1906) 34 Clunet, 416.

<sup>385</sup> App. Paris (Mar. 29, 1836) Journal du palais, 1835-1836 (3d ed.) 1208;



(2) *German Law.*

The time within which suit must be brought is governed by the law which controls the obligation, that is, by the *lex loci solutionis*.<sup>386</sup>

(3) *Italian Law.*

The law governing the substance of the contract, that is, the law of the place where the contract is executed, is said to control the time within which suit must be brought.<sup>387</sup>

## C. LATIN-AMERICAN LAW.

Article 52 of the Convention on International Civil Law concluded at the Congress of Montevideo provides as follows:

"The extinctive prescription of personal actions is governed by the law to which the corresponding obligations are subject."<sup>388</sup>

## D. DISCUSSION.

There is much disagreement among jurists concerning the rule governing prescription in the conflict of laws.<sup>389</sup> In the matter of bills of exchange, the great majority would apply the law governing the obligation of the contract, instead of the *lex fori*.<sup>390</sup> This view was accepted by the Institute of International Law with the qualification that as to the indorser and other guarantors, the time limits shall not exceed those prescribed for recourse against the drawer.<sup>391</sup> Some writers would modify the general rule in a different manner, by not

Trib. de com. de la Seine (Aug. 3, 1838), affirmed by Cour de Paris (Feb. 7, 1839) Journal du palais, 1839, 1, 298; App. Bordeaux (Dec. 26, 1876) S. 1877, 2, 108; Trib. civ. de la Seine (Feb. 19, 1889) 16 Clunet, 621.

<sup>386</sup> Staub, art. 77, n. 2; art. 86, n. 6; (May 8, 1880) 2 R G, 13; (Jan. 17, 1882) 6 R G, 24.

<sup>387</sup> Ottolenghi, 505. See arts. 320-321 of the Italian Commercial Code.

<sup>388</sup> The Court of Appeals of Buenos Ayres has held in two late decisions, of July, 1909, and Aug. 10, 1903, not governed by the above treaty, that the law of the forum would control. See *Yannone v. Macchi* (1910) 37 Clunet, 633; *Banque Commerciale de Paris v. Seguin* (1910) 37 Clunet, 633.

<sup>389</sup> For the literature and the views expressed by the different writers on the subject of prescription in general, see Bar, 613 *et seq.*; Michel, 83, 91, 111, 137; 4 Weiss, 396.

<sup>390</sup> Asser, 84-85; Audinet, 621; Bettelheim, 204; Canstein, 206; Champcom-munal, 255; Despagnet, 999; 3 Diena, *Trattato*, 218, 223; Esperson, 59; 2 Jitta, 164; 8 Laurent, 360-361; 4 Lyon-Caen & Renault, 571; 2 Meili, 356; 2 Meyer, 374; Minakuchi, 108; Ottolenghi, 487, 495; Savigny, 201; Schäffner, 111; Villalbi, 422; Vincent & Penaud, *Effet de commerce*, no. 114; Wächter, 411; 4 Weiss, 406-407, 463. Also Lainé, *Étude sur le titre préliminaire du projet de Code Civil Belge*, *Bulletin de la société de législation comparée* (1889-1890) 551.

In favor of the *lex domicilii* of the debtor, Bar, 619; Surville & Arthuys, 937. *Contra*, and in favor of the law of the forum, Chrétien, 207.

<sup>391</sup> 8 Annuaire, 122, resolution VII.



allowing an action against any party after the statute of limitations of the forum has run.<sup>392</sup> The author accepts this view and would recommend its adoption by the uniform act.

Obviously, there are no sufficient reasons which should allow a person to recover upon a cause of action which is no longer enforceable under the law of the state governing the obligation. From the mere fact that the statute of limitations is regarded from the standpoint of internal law as relating to the remedy instead of to the substance of the contract, it does not follow that this distinction should be maintained in the conflict of laws. Broad considerations of justice would seem to suggest that a right which is no longer enforceable by action in the courts of the state whose law controls the obligation should not be enforced by the courts of another state. Logically, the *lex loci contractus* should also govern where its statute of limitations is longer than that of the forum. But the law of the forum may well decline to open its courts to foreign causes of action for a longer period than it would to similar causes of action arising within its own territory. The same grounds of policy, based upon considerations of legal security, which prompt a local legislator to fix certain time limits within which actions must be brought, apply with equal force to foreign causes of action. The view recommended above has in addition the great merit of bringing the rules of the conflict of laws prevailing in continental countries more closely together with those of England and the United States.

The law governing the particular contract should also determine the question of when the cause of action arises,<sup>393</sup> and matters relating to the interruption of the statute of limitations.<sup>394</sup>

Whether, in case an action on the contract is barred, a quasi-contractual action may be brought on the ground of unjust enrichment, should be controlled by the same law.<sup>395</sup>

## 10. AMOUNT OF RECOVERY.

### A. IN GENERAL.

Much conflict may arise with respect to the amount of recovery. Anglo-American law differs from that of the Hague Convention in that it does not allow a commission or a deduction by way of discount where suit is brought before maturity. The English law on the subject of damages was settled by the Bills of Exchange Act. In this

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<sup>392</sup> Audinet, 621; Despagnet, 999; 4 Weiss, 407. See also Bar, 619.

<sup>393</sup> 3 Diena, *Trattato*, 225; Ottolenghi, 510.

<sup>394</sup> 3 Diena, *Trattato*, 225.

<sup>395</sup> 3 Diena, *Trattato*, 242; Ottolenghi, 512.

country great uncertainty continues to exist concerning the amount of recovery.<sup>396</sup> The Negotiable Instruments Law has not attempted to regulate the subject. In many states, fixed damages are prescribed by statute in lieu of the ordinary damages, charges, and expenses.

In the light of such conflicting rules in the municipal law, which is the rule which shall control the rights of the holder in the conflict of laws?

## B. ANGLO-AMERICAN LAW.

### (1) *English Law.*

Section 57 of the Bills of Exchange Act enacts:

"Where a bill is dishonoured the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:

"(1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor, or from a prior indorser—

"(a) The amount of the bill:

"(b) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case:

"(c) The expenses of noting, or when protest is necessary, and the protest has been extended, the expenses of protest.

"(2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

"(3.) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper."

Although subdivision 1 of section 57 is couched in general terms, it appears to apply only to bills dishonored in England.<sup>397</sup> The subdivision is not exhaustive, however. In the case of a bill dishonored in England by non-payment, a foreign drawer who has paid re-exchange may recover it from the English acceptor, and, if he is liable for re-exchange, may prove it in bankruptcy against the acceptor's estate before actual payment.<sup>398</sup> Where the bill is dishonored in England and the action is brought in an English court,<sup>399</sup> not only

<sup>396</sup> See Norton, 229-235.

<sup>397</sup> Chalmers, 195.

<sup>398</sup> *Ex parte Robarts* (1886, C. A.) L. R. Q. B. 286, 56 L. J. Q. B. 74, 56 L. T. 599, 35 Wkly. Rep. 128. See also Chalmers, 195; Dicey, 599.

<sup>399</sup> Dicey, 599.



persons who have indorsed the instrument in England but also those who may have indorsed it abroad would appear to be subject to the above provisions. Where the bill is dishonored abroad, subdivision 2 of section 57 of the Bills of Exchange Act applies. Before the Bills of Exchange Act, the English law governing interest and damages for the non-fulfillment of the contract of the maker and acceptor, drawer and indorser, was that of the place where each party undertook that he himself would pay.<sup>400</sup>

## (2) *American Law.*

The *lex loci solutionis* of each contract governs both as to interest and as to damages.<sup>401</sup> As the contracts of the drawer and the indorsers are regarded as independent contracts according to which these parties do not agree to pay at the place of payment of the bill or note, interest and damages as against them are determined by the *lex loci contractus et solutionis* of their respective contracts.<sup>402</sup> The same rule applies where a fixed amount is payable by way of damages in lieu of re-exchange charges and expenses.<sup>403</sup>

## C. CONTINENTAL LAW.

### (1) *French Law.*

Interest by way of damages is recoverable in accordance with the *lex fori*.<sup>404</sup>

### (2) *German Law.*

The amount of recovery by the holder and by the indorsers who may have taken up the bill is specified in articles 50 and 51 of the German Bills of Exchange Law. Subdivision 1 of each of these sections allows interest at the rate of six per cent from the date of maturity or payment, and subdivision 3, a commission of one-third per cent. According to article 52 the provisions of articles 50 and 51,

<sup>400</sup> *Cooper v. Earl of Waldegrave* (1840) 2 Beav. 282; *Gibbs v. Fremont* (1853) 9 Exch. 25. See also Chalmers, 244-245; Dicey, 598-599; Mayne, 294.

<sup>401</sup> *Hawley v. Sloo* (1857) 12 La. Ann. 815; *Scofield v. Day* (1822, N. Y.) 20 Johns. 102; *Austin v. Imus* (1851) 23 Vt. 286.

<sup>402</sup> *Slacum v. Pomeroy* (1810, U. S.) 6 Cranch, 221, 3 L. E. 205; *Ex parte Heidelback* (1876) 2 Lowell, 526, Fed. Cas. no. 6322; *Crawford v. Branch Bank of Mobile* (1844) 6 Ala. 12, 41 Am. Dec. 33; *Bailey v. Heald* (1856) 17 Tex. 102.

A few courts hold that the drawers and indorsers agree to pay at the place of payment of the bill or note. *Bank of Illinois v. Brady* (1843) 3 McLean, 268, Fed. Cas. no. 888; *Mullen v. Morris* (1845) 2 Pa. St. 85; *Peck v. Mayo* (1842) 14 Vt. 33, 39 Am. Dec. 205.

<sup>403</sup> *Slacum v. Pomeroy* (1810, U. S.) 6 Cranch, 221, 3 L. E. 205; *Lennig v. Ralston* (1854) 23 Pa. St. 137.

<sup>404</sup> Cass. (Apr. 13, 1885) *Journal du palais*, 1886, 1, 369; 13 Clunet, 459.



subdivisions 1 and 3, do not exclude "in cases of recourse on a foreign place, . . . the higher rates permissible at such place." Though article 52 refers specifically to the foreign law only when it prescribes higher rates than are laid down by the German law, the principle underlying the provision is deemed to have a general operation.<sup>405</sup>

#### D. DISCUSSION.

A thorough discussion of the subject of interest and damages cannot be here undertaken; only the principal points of view will be mentioned. Where the bill or note bears interest but the rate of interest is not mentioned, there is general agreement that the law governing the obligation of the contract must determine the question. Where interest is claimed not by virtue of any contract, but as damages in case of default, many views have been expressed. In some jurisdictions it is held that such interest should be controlled by the law of the forum.<sup>406</sup> This view cannot be supported because it rests upon the false theory that non-contractual interest arises from the institution of the action instead of from the non-performance of the contract. Others favor the law of the place of payment, but the grounds on which they do so differ widely. The older writers applied the law of the place where the contract was made to the effects or consequences which inhere in the contract from its inception, but the law of the place of performance whenever the question related to consequences which arose subsequent to the formation of the contract as the result of negligence or default.<sup>407</sup> Some of the modern writers appear to recognize the same distinction, although they express it in different ways.<sup>408</sup> Some would say that the validity and obligation of the contract is controlled by the law of the place of making, but that all questions relating to the performance of the contract are subject to the law of the place of performance.<sup>409</sup> Both Story and Savigny apply the law of the place of payment to the determination of the validity and obligation of contracts in general.<sup>410</sup> The views of these jurists having been accepted by the English and American courts and

<sup>405</sup> See Bar, 682; 3 Diena, *Trattato*, 211, n.; 2 Grünhut, 580, n. 40.

<sup>406</sup> *Ayer v. Tilden* (1860, Mass.) 15 Gray, 178; *Journal du palais*, 1886, 1, 369. So also Valéry, 950.

<sup>407</sup> See *ante*, pp. 114-115. See also 2 Boullenois, 477 *et seq.*

<sup>408</sup> Esperson, 9 Clunet, 282; 1 Foelix, 252; Massé, no. 620. See also 3 Fiore, 258; 4 Weiss, 391-392.

<sup>409</sup> 3 Beale, *Cases on the conflict of laws*, 521, 544.

<sup>410</sup> Savigny, 208; Story, 395, 424.

The English rule that the law of the place of payment governs the question of moratory interest is said to be based on the theory that such law controls the obligation of the parties in general. "The place, at which each party to a bill

by those of Germany, they have little opportunity to discuss the question whether the recovery of moratory interest in the conflict of laws rests upon considerations other than those governing the recovery of contractual interest. Hornblower, C. J., however, draws a sharp distinction between the two in the case of *Healy v. Gorman*.<sup>411</sup> He says:

"The note in question though made in the city of New York was in express terms to be paid at the Bank of Elizabeth, in this State. The contract did not carry interest upon the face of it, but upon default of payment at the day and place, the law of this State tacitly annexes an obligation thenceforth to pay interest until the debt is liquidated. But the obligation to pay interest was no part of the contract; for if the contract had been performed, no interest could have been demanded. It may be said however, that it was; and that the understanding of the parties, and therefore in legal contemplation, a part of the New York contract, that if the money was not paid at maturity, it should then carry interest till paid. But the liability to pay interest, in such case is rather a legal consequence, than a conventional duty. The contract itself was for payment at a day certain. It did not contemplate a failure in the performance, and therefore made no provisions in anticipation of such an event; but left the law to take its course in case of a breach of the contract. Since therefore, the event which gave rise to and legalizes the plaintiff's claim to interest, happened in this State; or in other words, since it was *here*, that the right to interest accrued, and by operation of *our* law that it becomes payable, the rate of interest must be such as is allowed in this State."

The same result would have been reached had the learned justice applied the general rule laid down by Story, which has been accepted by the courts of New Jersey in a majority of the cases.<sup>412</sup>

Most of the continental writers of the present time disapprove the distinction made in the above case. They contend that on principle the primary and secondary obligations arising from a contract should be controlled by the same law. According to them the possibility of a breach of the contract must have been foreseen by the parties at the time the contract was made, and they must be deemed to have intended that the consequences resulting therefrom should be determined by the law governing the contract in general.<sup>413</sup>

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or note undertakes that *he himself* will pay it, is with regard to him the *lex loci contractus*, according to which his liability is governed." Mayne, 294. See also Dicey, 608.

<sup>411</sup> (1836) 15 N. J. L. 328.

<sup>412</sup> *Ball & Hill v. Consolidated Franklinite Co.* (1866) 32 N. J. L. 102; *Campbell v. Nichols* (1868) 33 N. J. L. 81; *Freese v. Brownell* (1871) 35 N. J. L. 285. *Contra, Columbia Fire Ins. Co. v. Kinyon* (1874) 37 N. J. L. 33; *Atwater v. Walker* (1863) 16 N. J. Eq. 42.

<sup>413</sup> Asser, 81; Audinet, 292; 1 Baudry-Lacantinerie & Barde, *Obligations*, no.



Whether the so-called intention theory be approved or not, the question is ultimately one of justice and practical convenience. We have seen that in matters relating to the *mode* of performance, it is a reasonable requirement of international intercourse that the law of the place of performance should be observed, although the obligation of the contract is subject in general to the law of the place of contracting. In the very nature of things, the usages existing at the place of performance should be followed with reference to the manner of performance unless the parties have agreed otherwise. However true the general proposition may be that the primary and secondary obligations arising from a contract should be governed by the same law, that is, by the law of the place of contracting, it must not be forgotten that the principal consideration underlying all rules governing damages is the reparation of the loss sustained. When the maker of a note or the acceptor of a bill of exchange enters into an agreement to pay the note or bill in another state or country, it is fair to presume in the ordinary case that the payee wants to use the money at the place of payment. Compensation must be made for the loss resulting from the failure to pay in that place. The true measure of damage is the value of the money at the place of payment. No problem in the conflict of laws would arise if a legal rule of damages had not been substituted in the case of non-payment of money for the actual loss resulting from the breach of a particular contract. The legal rate of interest is, however, nothing else than a legislative declaration made in the interest of certainty that the prescribed rate constitutes the average loss that will result in the particular state or country from a failure to pay money. It would seem, therefore, that the rate of interest allowed at the place of payment would cover the payee's loss more nearly than the legal rate prevailing at the place where the contract was entered into. In view of these considerations it would seem best to submit the question of damages in general, so far as bills and notes are concerned, to the law of the place of payment.<sup>414</sup>

The rule measuring the payee's damages as against the maker or

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497; Chausse, 35 *Revue critique*, 693-694; 2 Conde y Luque, 312-313; Despagne, 912; 2 Diena, *Principi*, 81-83; 3 Diena, *Trattato*, 209; 7 Laurent, nos. 463 *et seq.*; Ottolenghi, 469; Pillet, *Cours*, 331; 1 Rolin, 527. But compare Gestoso y Acosta, 455; 3 Lyon-Caen & Renault, no. 35; 2 Meyer, 374; 2 Rolin, 499-500; Surville & Arthuys, 738-739; Villalbi, 422.

<sup>414</sup> Accord, 4 Lyon-Caen & Renault, 561.

The question whether the holder may reimburse himself by drawing a sight draft for the amount on the party liable is determined by the same law. Bettelheim, 179; Restrepo-Hernandez, 461; Surville & Arthuys, 730.



acceptor must control also with respect to all subsequent holders of the instrument. The extent of a party's liability is fixed by the law governing his contract and is not affected by a negotiation of the instrument in another state.<sup>415</sup>

The question remains, however, whether the damages should be determined as to all parties by the same law. A number of authors are of the opinion that one law should govern. Notwithstanding their general approval of the doctrine of the independence of the different contracts of a bill or note, they hold that in this particular matter the law of the place of payment of the bill or note should control as to all parties.<sup>416</sup> They advocate this rule on grounds of convenience in order that the right of recourse between the parties may be adjusted more harmoniously than is possible if the measure of damages with respect to each party be subject to the *lex loci contractus* of his particular contract. The Institute of International Law desired to reach the same end, but it was unwilling to sacrifice the doctrine of the independence of the different contracts in the matter of damages. It resolved, therefore, that while the different contracts should be governed by the law of the state in which each contract is entered into, the obligation of the contracts placed upon the bill or note after its inception should not be more extensive than that of the drawer or of the maker.<sup>417</sup> In this way it was sought to prevent the possibility that a party to a bill or note might be held without having a right to recover the full amount from the party creating the instrument.

To the author the solution of the problem suggested by the Institute of International Law appears wholly impracticable. If uniformity in the amount of damages must be attained at all costs, he would prefer the law of the place of payment of the bill or note as the law governing non-contractual interest and damages with respect to all parties. He is of opinion, however, that the doctrine of the independence of the different contracts should not be abandoned in the matter of damages. In strict theory, as has been pointed out by Professor Ames,<sup>418</sup> the interest payable by the drawer or indorser in fulfillment of his contract of indemnity should run from the dishonor of the instrument to the time when it should, according to mercantile custom, be presented to the drawer or indorser, and such interest ought to be

<sup>415</sup> *Supra*, p. 134.

<sup>416</sup> Bar, 681; also in 1 Ehrenberg's *Handbuch*, 391-392; Bettelheim, 173; Champcommunal, 259; Chrétien, 213; Esperson, 75-76; 4 Lyon-Caen & Renault, 561; Valéry, 1288; 4 Weiss, 467.

<sup>417</sup> 8 *Annuaire*, 121.

<sup>418</sup> 2 Ames, 819-820; see also Mayne, 293.

computed at the rate prevailing at the place of dishonor. Interest payable by the drawer or indorser by way of damages for the non-fulfillment of his contract of indemnity should run only from the presentment of the instrument to the drawer or indorser and his failure to pay, and such interest should be computed according to the rate prevailing at the place where the contract of the drawer or indorser is to be performed. This distinction is not made, however, by the American cases.<sup>419</sup>

## 11. ACCEPTANCE AND PAYMENT FOR HONOR.

Considerable difference exists in matters of detail between the Anglo-American law and that of the Convention of the Hague in regard to acceptance and payment for honor. The principles of the conflict of laws that should control the questions which may arise from such a difference in the municipal law would appear to be plain. In conformity with the conclusions reached in this discussion, the contract of the acceptor for honor, as regards his capacity, the form of the contract, and the nature, conditions, and extent of the liability assumed should be subject to the law of the place where the contract is entered into.<sup>420</sup> On the other hand, the duty of the holder of a bill of exchange to allow acceptance for honor, and the effect of such acceptance upon his rights against the different parties to the instrument, should be governed by the *lex loci contractus* of each of the different parties.<sup>421</sup> This law likewise determines the duty of the holder to accept payment for honor and the conditions under which he is authorized to do so.<sup>422</sup> As regards the form in which payment

<sup>419</sup> Sec. 57 of the B. E. A. now provides, in accordance with the correct principle, that interest from maturity may be recovered from the drawer and the indorser. Cf. *Walker v. Barnes* (1813) 5 Taunt. 240.

<sup>420</sup> The Convention on Commercial Law concluded at the Congress of Montevideo has a specific provision to this effect as regards the obligation of the acceptor for honor. Art. 32.

Some writers regard the contract of an acceptor for honor as a contract of suretyship and as subject to the law governing the principal contract. Staub, art. 86, n. 8. The same view has been taken as to the contract of guaranty (*aval*). Convention on Commercial Law, Congress of Montevideo, art. 31; Staub, art. 86, n. 8. Most authors, however, favor the law of the place where the contract of guaranty was entered into. Bettelheim, 162-163; Carrio, 258; 2 Meyer, 374; Restrepo-Hernandez, 457; Villalbi, 415; 4 Weiss, 461.

<sup>421</sup> 3 Diena, *Trattato*, 130; 2 Jitta, 123; Ottolenghi, 207; Villalbi, 416. *Contra*, and in favor of the law of the place of acceptance, Bettelheim, 162.

This law also determines the duty of the holder to present the instrument to the referee in case of need. 2 Jitta, 123.

<sup>422</sup> 3 Diena, *Trattato*, 157-158; 2 Jitta, 141-142; Ottolenghi, 330; Villalbi, 416.



for honor must be made, and the procedure to be followed, the law of the place where payment for honor is made naturally controls.<sup>423</sup>

## 12. *RENOVOI*.

All of the rules discussed in this work must be understood as referring to the ordinary internal law of the *locus contractus*, *locus solutionis*, etc., and not to the law of the particular state or country in its totality, inclusive of its rules of the conflict of laws. The circumstance that the law of the place of contracting or the law of the place of performance may have rules of private international law differing from those of the forum is therefore of no consequence. This is true in relation to capacity, formal validity, obligation, or any other matter pertaining to bills and notes.

The courts do not always bear this fact in mind. The following quotation from the opinion of Judge Sanborn in *Guernsey v. Imperial Bank of Canada*<sup>424</sup> may serve as an example:

"This is an action by the owner of a promissory note payable in Canada made and indorsed in Illinois to recover the amount due upon the note from the indorser. Presentment, demand, and protest were made, and notice of dishonor was given in compliance with the law of Canada, but the indorser claims, and it is conceded, but neither admitted nor decided, that the notice would have been insufficient to charge the indorser if the note had been payable in Illinois. The court below held that the notice was good and rendered a judgment against the indorser. The latter's counsel insist that this ruling is error on the ground that the sufficiency of the notice is governed by the law of the place of indorsement and not by the law of the place of payment. To this contention there is a short and conclusive answer. The place of the indorsement was the state of Illinois. The law of that state was, when the indorsement was made, and it still is, that when commercial paper is indorsed in one jurisdiction and is payable in another the law of the place where it is payable governs the time and mode of presentment for payment, the manner of protest, and the time and manner of giving notice of dishonor, and the law of the place of indorsement is inapplicable to them. *Wooley v. Lyon*, 117 Ill. 248, 250, 6 N. E. 885, 886, 57 Am. Rep. 867. *If, therefore, as counsel contend, the law of the place where the indorsement was made, the law of Illinois, governs the sufficiency of the notice of dishonor in this case, that notice was good, for it was sufficient under the law of Canada where the note was payable, and the law of Illinois was that in a case of this character the law of the place where the note was payable governed the time and manner of giving the notice of dishonor.*"

The portion of the quotation which has been printed in italics accepts, apparently, the so-called *renvoi* doctrine, which, if generally

<sup>423</sup> 3 Diena, *Trattato*, 159; Villalbi, 417.

<sup>424</sup> (1911) 188 Fed. 300, 301. The italics are the present writer's.



adopted in the conflict of laws, would lead to great confusion. Counsel argued that the law of the place of indorsement, *i.e.*, the law of Illinois, should control the sufficiency of notice. The court's answer is that even if for the sake of argument counsel's contention be granted, the notice would be sufficient because it satisfied the law of the place of payment, that is, the law which would govern the question according to the rule of the conflict of laws adopted in Illinois. The unsoundness of the reasoning consists in the fact that the law of the place of indorsement, for the application of which counsel contended, was understood by the court as including the conflict of laws rules of the state of Illinois instead of merely its ordinary internal law of bills and notes. The fundamental question raised is whether the rules of the conflict of laws should be understood as referring the judge to the ordinary internal law of the foreign state or country, exclusive of its rules of the conflict of laws, or to the law of that state or country as a whole. The author has endeavored to show elsewhere<sup>425</sup> that all rules of the conflict of laws should be understood in the former sense. Unless the rules of the conflict of laws administered by the courts of the forum are understood as referring to the ordinary internal law of the foreign state, that is, in the present instance, to its local law of bills and notes, instead of to the law of that state as a whole, inclusive of its rules governing the conflict of laws, the courts of each state might be compelled to administer as many systems of the conflict of laws as are in existence in the whole world. The only sound and practical view is that all rules of the conflict of laws be understood as referring to the ordinary internal law of a foreign state, exclusive of its rules of the conflict of laws.

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<sup>425</sup> See *The renvoi theory and the application of foreign law* (1910) 10 Columbia Law Review, 190-207, 327-344; *The renvoi doctrine in the conflict of laws* (1918) 27 Yale Law Journal, 509-534.

**PART III**  
**APPENDICES**





# A. THE UNIFORM NEGOTIABLE INSTRUMENTS ACT

## TITLE I NEGOTIABLE INSTRUMENTS IN GENERAL

### ARTICLE I FORM AND INTERPRETATION

#### SEC. 1. FORM OF NEGOTIABLE INSTRUMENT.

An instrument to be negotiable must conform to the following requirements:

- (1) It must be in writing and signed by the maker or drawer;
- (2) Must contain an unconditional promise or order to pay a sum certain in money;
- (3) Must be payable on demand, or at a fixed or determinable future time;
- (4) Must be payable to order or to bearer; and
- (5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

#### SEC. 2. CERTAINTY AS TO SUM—WHAT CONSTITUTES.

The sum payable is a sum certain within the meaning of this act, although it is to be paid:

- (1) With interest; or
- (2) By stated instalments; or
- (3) By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or
- (4) With exchange, whether at a fixed rate or at the current rate; or
- (5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

#### SEC. 3. WHEN PROMISE IS UNCONDITIONAL.

An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with:

- (1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

(2) A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

#### SEC. 4. DETERMINABLE FUTURE TIME—WHAT CONSTITUTES.

An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

- (1) At a fixed period after date or sight; or
- (2) On or before a fixed or determinable future time specified therein; or
- (3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

#### SEC. 5. ADDITIONAL PROVISIONS NOT AFFECTING NEGOTIABILITY.

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

- (1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
- (2) Authorizes a confession of judgment if the instrument be not paid at maturity; or
- (3) Waives the benefit of any law intended for the advantage or protection of the obligor; or
- (4) Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

#### SEC. 6. OMISSIONS—SEAL—PARTICULAR MONEY.

The validity and negotiable character of an instrument are not affected by the fact that:

- (1) It is not dated; or
- (2) Does not specify the value given, or that any value has been given therefor; or
- (3) Does not specify the place where it is drawn or the place where it is payable; or
- (4) Bears a seal; or
- (5) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

#### SEC. 7. WHEN PAYABLE ON DEMAND.

An instrument is payable on demand:

- (1) Where it is expressed to be payable on demand, or at sight, or on presentation; or
- (2) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

#### SEC. 8. WHEN PAYABLE TO ORDER.

The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

- (1) A payee who is not maker, drawer, or drawee; or
- (2) The drawer or maker; or
- (3) The drawee; or
- (4) Two or more payees jointly; or
- (5) One or some of several payees; or
- (6) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

#### SEC. 9. WHEN PAYABLE TO BEARER.

The instrument is payable to bearer:

- (1) When it is expressed to be so payable; or
- (2) When it is payable to a person named therein or bearer; or
- (3) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or
- (4) When the name of the payee does not purport to be the name of any person; or
- (5) When the only or last indorsement is an indorsement in blank.

#### SEC. 10. TERMS WHEN SUFFICIENT.

The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

#### SEC. 11. DATE, PRESUMPTION AS TO.

Where the instrument or an acceptance or any indorsement thereon



is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

**SEC. 12. ANTE-DATED AND POST-DATED.**

The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

**SEC. 13. WHEN DATE MAY BE INSERTED.**

Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

**SEC. 14. BLANKS—WHEN MAY BE FILLED.**

Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

**SEC. 15. INCOMPLETE INSTRUMENT NOT DELIVERED.**

Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

**SEC. 16. DELIVERY—WHEN EFFECTUAL—WHEN PRESUMED.**

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect

thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

#### SEC. 17. CONSTRUCTION WHERE INSTRUMENT IS AMBIGUOUS.

Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

#### SEC. 18. LIABILITY OF PERSON SIGNING IN TRADE OR ASSUMED NAME.

No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But

one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

**SEC. 19. SIGNATURE BY AGENT—AUTHORITY—HOW SHOWN.**

The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

**SEC. 20. LIABILITY OF PERSON SIGNING AS AGENT, ETC.**

Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

**SEC. 21. SIGNATURE BY PROCURATION—EFFECT OF.**

A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

**SEC. 22. EFFECT OF INDORSEMENT BY INFANT OR CORPORATION.**

The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

**SEC. 23. FORGED SIGNATURE—EFFECT OF.**

When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

**ARTICLE II  
CONSIDERATION**

**SEC. 24. PRESUMPTION OF CONSIDERATION.**

Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.



**SEC. 25. CONSIDERATION, WHAT CONSTITUTES.**

Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

**SEC. 26. WHAT CONSTITUTES HOLDER FOR VALUE.**

Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

**SEC. 27. WHEN LIEN ON INSTRUMENT CONSTITUTES HOLDER FOR VALUE.**

Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

**SEC. 28. EFFECT OF WANT OF CONSIDERATION.**

Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defence pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

**SEC. 29. LIABILITY OF ACCOMMODATION PARTY.**

An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

### ARTICLE III NEGOTIATION

**SEC. 30. WHAT CONSTITUTES NEGOTIATION.**

An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

**SEC. 31. INDORSEMENT—HOW MADE.**

The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

**SEC. 32. INDORSEMENT MUST BE OF ENTIRE INSTRUMENT.**

The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

**SEC. 33. KINDS OF INDORSEMENT.**

An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

**SEC. 34. SPECIAL INDORSEMENT—INDORSEMENT IN BLANK.**

A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

**SEC. 35. BLANK INDORSEMENT—HOW CHANGED TO SPECIAL INDORSEMENT.**

The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

**SEC. 36. WHEN INDORSEMENT RESTRICTIVE.**

An indorsement is restrictive, which either :

- (1) Prohibits the further negotiation of the instrument; or
- (2) Constitutes the indorsee the agent of the indorser; or
- (3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

**SEC. 37. EFFECT OF RESTRICTING INDORSEMENT—RIGHTS OF INDORSEE.**

A restrictive indorsement confers upon the indorsee the right :

- (1) To receive payment of the instrument;
- (2) To bring any action thereon that the indorser could bring;
- (3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

**SEC. 38. QUALIFIED INDORSEMENT.**

A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

**SEC. 39. CONDITIONAL INDORSEMENT.**

Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

**SEC. 40. INDORSEMENT OF INSTRUMENT PAYABLE TO BEARER.**

Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

**SEC. 41. INDORSEMENT WHERE PAYABLE TO TWO OR MORE PERSONS.**

Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

**SEC. 42. EFFECT OF INSTRUMENT DRAWN OR INDORSED TO A PERSON AS CASHIER.**

Where an instrument is drawn or indorsed to a person as "Cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

**SEC. 43. INDORSEMENT WHERE NAME IS MISSPELLED, ET CETERA.**

Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

**SEC. 44. INDORSEMENT IN REPRESENTATIVE CAPACITY.**

Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.



**SEC. 45. TIME OF INDORSEMENT—PRESUMPTION.**

Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

**SEC. 46. PLACE OF INDORSEMENT—PRESUMPTION.**

Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

**SEC. 47. CONTINUATION OF NEGOTIABLE CHARACTER.**

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

**SEC. 48. STRIKING OUT INDORSEMENT.**

The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

**SEC. 49. TRANSFER WITHOUT INDORSEMENT—EFFECT OF.**

Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

**SEC. 50. WHEN PRIOR PARTY MAY NEGOTIATE INSTRUMENT.**

Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

**ARTICLE IV  
RIGHTS OF THE HOLDER**

**SEC. 51. RIGHT OF HOLDER TO SUE—PAYMENT.**

The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

**SEC. 52. WHAT CONSTITUTES A HOLDER IN DUE COURSE.**

A holder in due course is a holder who has taken the instrument under the following conditions:

- (1) That it is complete and regular upon its face;
- (2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
- (3) That he took it in good faith and for value;
- (4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

**SEC. 53. WHEN PERSON NOT DEEMED HOLDER IN DUE COURSE.**

Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

**SEC. 54. NOTICE BEFORE FULL AMOUNT PAID.**

Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

**SEC. 55. WHEN TITLE DEFECTIVE.**

The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

**SEC. 56. WHAT CONSTITUTES NOTICE OF DEFECT.**

To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

**SEC. 57. RIGHTS OF HOLDER IN DUE COURSE.**

A holder in due course holds the instrument free from any defect of title of prior parties, and free from defences available to prior

parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

**SEC. 58. WHEN SUBJECT TO ORIGINAL DEFENCES.**

In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defences as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

**SEC. 59. WHO DEEMED HOLDER IN DUE COURSE.**

Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

**ARTICLE V  
LIABILITIES OF PARTIES**

**SEC. 60. LIABILITY OF MAKER.**

The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

**SEC. 61. LIABILITY OF DRAWER.**

The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

**SEC. 62. LIABILITY OF ACCEPTOR.**

The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

- (1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
- (2) The existence of the payee and his then capacity to indorse.



**SEC. 63. WHEN PERSON DEEMED INDORSER.**

A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

**SEC. 64. LIABILITY OF IRREGULAR INDORSER.**

Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery he is liable as indorser, in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

**SEC. 65. WARRANTY WHERE NEGOTIATION BY DELIVERY, ET CETERA.**

Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has a good title to it;

(3) That all prior parties had capacity to contract;

(4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

**SEC. 66. LIABILITY OF GENERAL INDORSER.**

Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

(1) The matters and things mentioned in subdivisions one, two and three of the next preceding section; and

(2) That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor,

and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

**SEC. 67. LIABILITY OF INDORSER WHERE PAPER NEGOTIABLE BY DELIVERY.**

Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

**SEC. 68. ORDER IN WHICH INDORSERS ARE LIABLE.**

As respects one another indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

**SEC. 69. LIABILITY OF AN AGENT OR BROKER.**

Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section 65 of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

**ARTICLE VI  
PRESENTMENT FOR PAYMENT**

**SEC. 70. EFFECT OF WANT OF DEMAND ON PRINCIPAL DEBTOR.**

Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

**SEC. 71. PRESENTMENT WHERE INSTRUMENT IS NOT PAYABLE ON DEMAND AND WHERE PAYABLE ON DEMAND.**

Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

**SEC. 72. - WHAT CONSTITUTES A SUFFICIENT PRESENTMENT.**

Presentment for payment, to be sufficient, must be made:

- (1) By the holder, or by some person authorized to receive payment on his behalf;
- (2) At a reasonable hour on a business day;
- (3) At a proper place as herein defined;
- (4) To the person primarily liable on the instrument or if he is absent or inaccessible, to any person found at the place where the presentment is made.

**SEC. 73. PLACE OF PRESENTMENT.**

Presentment for payment is made at the proper place:

- (1) Where a place of payment is specified in the instrument and it is there presented;
- (2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;
- (3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
- (4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

**• SEC. 74. INSTRUMENT MUST BE EXHIBITED.**

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

**SEC. 75. PRESENTATION WHERE INSTRUMENT PAYABLE AT BANK.**

Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

**SEC. 76. PRESENTMENT WHERE PRINCIPAL DEBTOR IS DEAD.**

Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.



**SEC. 77. PRESENTMENT TO PERSONS LIABLE AS PARTNERS.**

Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

**SEC. 78. PRESENTMENT TO JOINT DEBTORS.**

Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

**SEC. 79. WHEN PRESENTMENT NOT REQUIRED TO CHARGE THE DRAWER.**

Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

**SEC. 80. WHEN PRESENTMENT NOT REQUIRED TO CHARGE THE INDORSER.**

Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

**SEC. 81. WHEN DELAY IN MAKING PRESENTMENT IS EXCUSED.**

Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

**SEC. 82. WHEN PRESENTMENT MAY BE DISPENSED WITH.**

Presentment for payment is dispensed with:

- (1) Where after the exercise of reasonable diligence presentment as required by this act cannot be made;
- (2) Where the drawee is a fictitious person;
- (3) By waiver of presentment, express or implied.

**SEC. 83. WHEN INSTRUMENT DISHONORED BY NON-PAYMENT.**

The instrument is dishonored by non-payment when:

- (1) It is duly presented for payment and payment is refused or cannot be obtained; or
- (2) Presentment is excused and the instrument is overdue and unpaid.

**SEC. 84. LIABILITY OF PERSON SECONDARILY LIABLE WHEN INSTRUMENT DISHONORED.**

Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

**SEC. 85. TIME OF MATURITY.**

Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

**SEC. 86. TIME—HOW COMPUTED.**

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

**SEC. 87. RULE WHERE INSTRUMENT PAYABLE AT BANK.**

Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

**SEC. 88. WHAT CONSTITUTES PAYMENT IN DUE COURSE.**

Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

**ARTICLE VII  
NOTICE OF DISHONOR**

**SEC. 89. TO WHOM NOTICE OF DISHONOR MUST BE GIVEN.**

Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dis-

honor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

**SEC. 90. BY WHOM GIVEN.**

The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

**SEC. 91. NOTICE GIVEN BY AGENT.**

Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

**SEC. 92. EFFECT OF NOTICE GIVEN ON BEHALF OF HOLDER.**

Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

**SEC. 93. EFFECT WHERE NOTICE IS GIVEN BY PARTY ENTITLED THERETO.**

Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

**SEC. 94. WHEN AGENT MAY GIVE NOTICE.**

Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

**SEC. 95. WHEN NOTICE SUFFICIENT.**

A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

**SEC. 96. FORM OF NOTICE.**

The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.



**SEC. 97. TO WHOM NOTICE MAY BE GIVEN.**

Notice of dishonor may be given either to the party himself or to his agent in that behalf.

**SEC. 98. NOTICE WHERE PARTY IS DEAD.**

When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

**SEC. 99. NOTICE TO PARTNERS.**

Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

**SEC. 100. NOTICE TO PERSONS JOINTLY LIABLE.**

Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

**SEC. 101. NOTICE TO BANKRUPT.**

Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

**SEC. 102. TIME WITHIN WHICH NOTICE MUST BE GIVEN.**

Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.

**SEC. 103. WHERE PARTIES RESIDE IN SAME PLACE.**

Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

- (1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;
- (2) If given at his residence, it must be given before the usual hours of rest on the day following;
- (3) If sent by mail, it must be deposited in the post-office in time to reach him in usual course on the day following.

**SEC. 104. WHERE PARTIES RESIDE IN DIFFERENT PLACES.**

Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

- (1) If sent by mail, it must be deposited in the post-office in time

to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

(2) If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post-office within the time specified in the last subdivision.

#### SEC. 105. WHEN SENDER DEEMED TO HAVE GIVEN DUE NOTICE.

Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

#### SEC. 106. DEPOSIT IN POST-OFFICE—WHAT CONSTITUTES.

Notice is deemed to have been deposited in the post-office when deposited in any branch post-office or in any letter box under the control of the post-office department.

#### SEC. 107. NOTICE TO SUBSEQUENT PARTY—TIME OF.

Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

#### SEC. 108. WHERE NOTICE MUST BE SENT.

Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

- (1) Either to the post-office nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or
- (2) If he live in one place, and have his place of business in another, notice may be sent to either place; or
- (3) If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

#### SEC. 109. WAIVER OF NOTICE.

Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

#### SEC. 110. WHO AFFECTED BY WAIVER.

Where the waiver is embodied in the instrument itself, it is binding

upon all parties; but where it is written above the signature of an indorser, it binds him only.

**SEC. 111. WAIVER OF PROTEST.**

A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

**SEC. 112. WHEN NOTICE IS DISPENSED WITH.**

Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

**SEC. 113. DELAY IN GIVING NOTICE—HOW EXCUSED.**

Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to this default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

**SEC. 114. WHEN NOTICE NEED NOT BE GIVEN TO DRAWER.**

Notice of dishonor is not required to be given to the drawer in either of the following cases:

- (1) Where the drawer and drawee are the same person;
- (2) When the drawee is a fictitious person or a person not having capacity to contract;
- (3) When the drawer is the person to whom the instrument is presented for payment;
- (4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
- (5) Where the drawer has countermanded payment.

**SEC. 115. WHEN NOTICE NEED NOT BE GIVEN TO INDORSER.**

Notice of dishonor is not required to be given to an indorser in either of the following cases:

- (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;
- (2) Where the indorser is the person to whom the instrument is presented for payment;
- (3) Where the instrument was made or accepted for his accommodation.



**SEC. 116. NOTICE OF NON-PAYMENT WHERE ACCEPTANCE REFUSED.**

Where due notice of dishonor by non-acceptance has been given notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

**SEC. 117. EFFECT OF OMISSION TO GIVE NOTICE OF NON-ACCEPTANCE.**

An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

**SEC. 118. WHEN PROTEST NEED NOT BE MADE—WHEN MUST BE MADE.**

Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

## ARTICLE VIII DISCHARGE OF NEGOTIABLE INSTRUMENTS

**SEC. 119. INSTRUMENT—HOW DISCHARGED.**

A negotiable instrument is discharged:

- (1) By payment in due course by or on behalf of the principal debtor;
- (2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
- (3) By the intentional cancellation thereof by the holder;
- (4) By any other act which will discharge a simple contract for the payment of money;
- (5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

**SEC. 120. WHEN PERSONS SECONDARILY LIABLE ON, DISCHARGED.**

A person secondarily liable on the instrument is discharged:

- (1) By any act which discharges the instrument;
- (2) By the intentional cancellation of his signature by the holder;
- (3) By the discharge of a prior party;
- (4) By a valid tender of payment made by a prior party;
- (5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
- (6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instru-

ment, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

**SEC. 121. RIGHT OF PARTY WHO DISCHARGES INSTRUMENT.**

Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

(1) Where it is payable to the order of a third person, and has been paid by the drawer; and

(2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

**SEC. 122. RENUNCIATION BY HOLDER.**

The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

**SEC. 123. CANCELLATION—UNINTENTIONAL—BURDEN OF PROOF.**

A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

**SEC. 124. ALTERATION OF INSTRUMENT—EFFECT OF.**

Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

**SEC. 125. WHAT CONSTITUTES A MATERIAL ALTERATION.**

Any alteration which changes:

(1) The date;

- (2) The sum payable, either for principal or interest;
- (3) The time or place of payment;
- (4) The number or the relations of the parties;
- (5) The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

## TITLE II BILLS OF EXCHANGE

### ARTICLE I FORM AND INTERPRETATION

#### SEC. 126. BILL OF EXCHANGE DEFINED.

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

#### SEC. 127. BILL NOT AN ASSIGNMENT OF FUNDS IN HANDS OF DRAWEE.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

#### SEC. 128. BILL ADDRESSED TO MORE THAN ONE DRAWEE.

A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

#### SEC. 129. INLAND AND FOREIGN BILLS OF EXCHANGE.

An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

#### SEC. 130. WHEN BILL MAY BE TREATED AS PROMISSORY NOTE.

Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.



**SEC. 131. REFEREE IN CASE OF NEED.**

The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

**ARTICLE II  
ACCEPTANCE****SEC. 132. ACCEPTANCE—HOW MADE, ET CETERA.**

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

**SEC. 133. HOLDER ENTITLED TO ACCEPTANCE ON FACE OF BILL.**

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

**SEC. 134. ACCEPTANCE BY SEPARATE INSTRUMENT.**

Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

**SEC. 135. PROMISE TO ACCEPT—WHEN EQUIVALENT TO ACCEPTANCE.**

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who upon the faith thereof, receives the bill for value.

**SEC. 136. TIME ALLOWED DRAWEE TO ACCEPT.**

The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.

**SEC. 137. LIABILITY OF DRAWEE RETAINING OR DESTROYING BILL.**

Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill

accepted or non-accepted to the holder, he will be deemed to have accepted the same.

#### SEC. 138. ACCEPTANCE OF INCOMPLETE BILL.

A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

#### SEC. 139. KINDS OF ACCEPTANCES.

An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

#### SEC. 140. WHAT CONSTITUTES A GENERAL ACCEPTANCE.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

#### SEC. 141. QUALIFIED ACCEPTANCE.

An acceptance is qualified, which is:

- (1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
- (2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (3) Local, that is to say, an acceptance to pay only at a particular place;
- (4) Qualified as to time;
- (5) The acceptance of some one or more of the drawees, but not of all.

#### SEC. 142. RIGHTS OF PARTIES AS TO QUALIFIED ACCEPTANCE.

The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he

must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

### ARTICLE III PRESENTMENT FOR ACCEPTANCE

#### SEC. 143. WHEN PRESENTMENT FOR ACCEPTANCE MUST BE MADE.

Presentment for acceptance must be made:

(1) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2) Where the bill expressly stipulates that it shall be presented for acceptance; or

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

#### SEC. 144. WHEN FAILURE TO PRESENT RELEASES DRAWER AND INDORSER.

Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

#### SEC. 145. PRESENTMENT—HOW MADE.

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

(1) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

(2) Where the drawee is dead, presentment may be made to his personal representative;

(3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

#### SEC. 146. ON WHAT DAYS PRESENTMENT MAY BE MADE.

A bill may be presented for acceptance on any day on which nego-



tible instruments may be presented for payment under the provisions of sections 72 and 85 of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

**SEC. 147. PRESENTMENT WHERE TIME IS INSUFFICIENT.**

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

**SEC. 148. WHERE PRESENTMENT IS EXCUSED.**

Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

- (1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill;
- (2) Where, after the exercise of reasonable diligence, presentment cannot be made;
- (3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

**SEC. 149. WHEN DISHONORED BY NON-ACCEPTANCE.**

A bill is dishonored by non-acceptance:

- (1) When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or
- (2) When presentment for acceptance is excused and the bill is not accepted.

**SEC. 150. DUTY OF HOLDER WHERE BILL NOT ACCEPTED.**

Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.

**SEC. 151. RIGHTS OF HOLDER WHERE BILL NOT ACCEPTED.**

When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

ARTICLE IV  
PROTEST

**SEC. 152. IN WHAT CASES PROTEST NECESSARY.**

Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

**SEC. 153. PROTEST—HOW MADE.**

The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify:

- (1) The time and place of presentment;
- (2) The fact that presentment was made and the manner thereof;
- (3) The cause or reason for protesting the bill;
- (4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

**SEC. 154. PROTEST—BY WHOM MADE.**

Protest may be made by:

- (1) A notary public; or
- (2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

**SEC. 155. PROTEST—WHEN TO BE MADE.**

When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

**SEC. 156. PROTEST—WHERE MADE.**

A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

**SEC. 157. PROTEST BOTH FOR NON-ACCEPTANCE AND NON-PAYMENT.**

A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

**SEC. 158. PROTEST BEFORE MATURITY WHERE ACCEPTOR INSOLVENT.**

Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

**SEC. 159. WHEN PROTEST DISPENSED WITH.**

Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

**SEC. 160. PROTEST WHERE BILL IS LOST, ET CETERA.**

When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

**ARTICLE V  
ACCEPTANCE FOR HONOR**

**SEC. 161. WHEN BILL MAY BE ACCEPTED FOR HONOR.**

Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

**SEC. 162. ACCEPTANCE FOR HONOR—HOW MADE.**

An acceptance for honor *supra* protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

**SEC. 163. WHEN DEEMED TO BE AN ACCEPTANCE FOR HONOR OF THE DRAWER.**

Where an acceptance for honor does not expressly state for whose



honor it is made, it is deemed to be an acceptance for the honor of the drawer.

**SEC. 164. LIABILITY OF THE ACCEPTOR FOR HONOR.**

The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

**SEC. 165. AGREEMENT OF ACCEPTOR FOR HONOR.**

The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

**SEC. 166. MATURITY OF BILL PAYABLE AFTER SIGHT—ACCEPTED FOR HONOR.**

Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

**SEC. 167. PROTEST OF BILL ACCEPTED FOR HONOR, ET CETERA.**

Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

**SEC. 168. PRESENTMENT FOR PAYMENT TO ACCEPTOR FOR HONOR—HOW MADE.**

Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity;

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 104.

**SEC. 169. WHEN DELAY IN MAKING PRESENTMENT IS EXCUSED.**

The provisions of section 81 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

**SEC. 170. DISHONOR OF BILL BY ACCEPTOR FOR HONOR.**

When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.

ARTICLE VI  
PAYMENT FOR HONOR

SEC. 171. WHO MAY MAKE PAYMENT FOR HONOR.

Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

SEC. 172. PAYMENT FOR HONOR—HOW MADE.

The payment for honor *supra* protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

SEC. 173. DECLARATION BEFORE PAYMENT FOR HONOR.

The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

SEC. 174. PREFERENCE OF PARTIES OFFERING TO PAY FOR HONOR.

Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

SEC. 175. EFFECT ON SUBSEQUENT PARTIES WHERE BILL IS PAID FOR HONOR.

Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

SEC. 176. WHERE HOLDER REFUSES TO RECEIVE PAYMENT *SUPRA* PROTEST.

Where the holder of a bill refuses to receive payment *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.

SEC. 177. RIGHTS OF PAYER FOR HONOR.

The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

ARTICLE VII  
BILLS IN A SET

SEC. 178. BILLS IN SETS CONSTITUTE ONE BILL.

Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

SEC. 179. RIGHT OF HOLDERS WHERE DIFFERENT PARTS ARE NEGOTIATED.

Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

SEC. 180. LIABILITY OF HOLDER WHO INDORSES TWO OR MORE PARTS OF A SET TO DIFFERENT PERSONS.

Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

SEC. 181. ACCEPTANCE OF BILLS DRAWN IN SETS.

The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

SEC. 182. PAYMENT BY ACCEPTOR OF BILLS DRAWN IN SETS.

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

SEC. 183. EFFECT OF DISCHARGING ONE OF A SET.

Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

TITLE III  
PROMISSORY NOTES AND CHECKS

ARTICLE I

SEC. 184. PROMISSORY NOTE DEFINED.

A negotiable promissory note within the meaning of this act is an



unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

**SEC. 185. CHECK DEFINED.**

A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

**SEC. 186. WITHIN WHAT TIME A CHECK MUST BE PRESENTED.**

A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

**SEC. 187. CERTIFICATION OF CHECK—EFFECT OF.**

Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

**SEC. 188. EFFECT WHERE THE HOLDER OF CHECK PROCURES IT TO BE CERTIFIED.**

Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

**SEC. 189. WHEN CHECK OPERATES AS AN ASSIGNMENT.**

A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

## TITLE IV GENERAL PROVISIONS

### ARTICLE I

**SEC. 190. SHORT TITLE.**

This act may be cited as the Uniform Negotiable Instruments Act.<sup>1</sup>

**SEC. 191. DEFINITIONS AND MEANING OF TERMS.**

In this act, unless the context otherwise requires:

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<sup>1</sup> Sec. 190 as originally drafted reads "This Act shall be known as the Negotiable Instruments Law."

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter-claim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

#### SEC. 192. PERSON PRIMARILY LIABLE ON INSTRUMENT.

The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are “secondarily” liable.

#### SEC. 193. REASONABLE TIME, WHAT CONSTITUTES.

In determining what is a “reasonable time” or an “unreasonable time,” regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

#### SEC. 194. TIME, HOW COMPUTED—WHEN LAST DAY FALLS ON HOLIDAY.

Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

#### SEC. 195. APPLICATION OF ACT.

The provisions of this act do not apply to negotiable instruments made and delivered prior to the [taking effect]<sup>2</sup> hereof.

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<sup>2</sup> Sec. 195 as originally drafted uses the word “passage.”

SEC. 196. CASES NOT PROVIDED FOR IN ACT.

In any case not provided for in this act the rules of law and equity including the law merchant shall govern.<sup>3</sup>

SEC. 197. REPEALS.

All acts and parts of acts inconsistent with this art are hereby repealed.<sup>4</sup>

SEC. 198. TIME WHEN ACT TAKES EFFECT.

The [act]<sup>5</sup> shall take effect on

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<sup>3</sup> Sec. 196 as originally drafted reads "In any case not provided for in this Act the rules of the law merchant shall govern."

<sup>4</sup> Sec. 197 as originally drafted reads "Of the laws enumerated in the schedule hereto annexed that portion specified in the last column is repealed."

<sup>5</sup> Sec. 198 as originally drafted uses the word "chapter."



## B. THE BILLS OF EXCHANGE ACT, 1882

45 & 46 VICT. CH. 61

### PART I

#### PRELIMINARY

##### SEC. 1. SHORT TITLE.

This act may be cited as the Bills of Exchange Act, 1882.

##### SEC. 2. INTERPRETATION OF TERMS.

In this Act, unless the context otherwise requires:

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter claim and set off.

“Banker” includes a body of persons, whether incorporated or not, who carry on the business of banking.

“Bankrupt” includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Issue” means the first delivery of a bill or note, completed in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

### PART II

#### BILLS OF EXCHANGE

#### FORM AND INTERPRETATION

##### SEC. 3. BILL OF EXCHANGE DEFINED.

(1) A bill of exchange is an unconditional order in writing, ad-

dressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to re-imburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional.

(4) A bill is not invalid by reason:

- (a) That it is not dated;
- (b) That it does not specify the value given, or that any value has been given therefor;
- (c) That it does not specify the place where it is drawn or the place where it is payable.

#### SEC. 4. INLAND AND FOREIGN BILLS.

(1) An inland bill is a bill which is or on the face of it purports to be (a) both drawn and payable within the British Islands, or (b) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

#### SEC. 5. EFFECT WHERE DIFFERENT PARTIES TO BILL ARE THE SAME PERSON.

(1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

#### SEC. 6. ADDRESS TO DRAWEE.

(1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or two or more drawees in succession is not a bill of exchange.

#### SEC. 7. CERTAINTY REQUIRED AS TO PAYEE.

(1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

#### SEC. 8. WHAT BILLS ARE NEGOTIABLE.

(1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

#### SEC. 9. SUM PAYABLE.

(1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid:

(a) With interest.

(b) By stated instalments.

(c) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(d) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.



(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

**SEC. 10. BILL PAYABLE ON DEMAND.**

(1) A bill is payable on demand:

(a) Which is expressed to be payable on demand, or at sight, or on presentation; or

(b) In which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

**SEC. 11. BILL PAYABLE AT A FUTURE TIME.**

A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable:

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

**SEC. 12. OMISSION OF DATE IN BILL PAYABLE AFTER DATE.**

Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

**SEC. 13. ANTE-DATING AND POST-DATING.**

(1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

**SEC. 14. COMPUTATION OF TIME OF PAYMENT.**

Where a bill is not payable on demand the day on which it falls due is determined as follows:

(1) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace:

Provided that:

(a) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

(b) When the last day of grace is a bank holiday (other than Christmas day or Good Friday) under the Bank Holidays Act, 1871,<sup>e</sup> and acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day. .

(2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance or for non-delivery.

(4) The term "month" in a bill means calendar month.

**SEC. 15. CASE OF NEED.**

The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

**SEC. 16. OPTIONAL STIPULATIONS BY DRAWER OR INDORSER.**

The drawer of a bill, and any indorser, may insert therein an express stipulation:

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<sup>e</sup> 34 & 35 Vict. ch. 17.

- (1) Negating or limiting his own liability to the holder;
- (2) Waiving as regards himself some or all of the holder's duties.

SEC. 17. DEFINITION AND REQUISITES OF ACCEPTANCE.

(1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely:

- (a) It must be written on the bill and be signed by the drawee.  
The mere signature of the drawee without additional words is sufficient.
- (b) It must not express that the drawee will perform his promise by any other means than the payment of money.

SEC. 18. TIME FOR ACCEPTANCE.

A bill may be accepted:

(1) Before it has been signed by the drawer, or while otherwise incomplete;

(2) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment;

(3) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

SEC. 19. GENERAL AND QUALIFIED ACCEPTANCES.

(1) An acceptance is either (a) general or (b) qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is:

- (a) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
- (b) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (c) local, that is to say, an acceptance to pay only at a particular specified place;

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere;



- (d) qualified as to time;
- (e) the acceptance of some one or more of the drawees, but not of all.

#### SEC. 20. INCHOATE INSTRUMENTS.

(1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

#### SEC. 21. DELIVERY.

(1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery:

- (a) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be;
- (b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has

signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

#### CAPACITY AND AUTHORITY OF PARTIES

##### SEC. 22. CAPACITY OF PARTIES.

(1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

##### SEC. 23. SIGNATURE ESSENTIAL TO LIABILITY.

No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such;

Provided that:

(1) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;

(2) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

##### SEC. 24. FORGED OR UNAUTHORIZED SIGNATURE.

Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall effect the ratification of an unauthorized signature not amounting to a forgery.

##### SEC. 25. PROCURATION SIGNATURES.

A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

**SEC. 26. PERSON SIGNING AS AGENT OR IN REPRESENTATIVE CAPACITY.**

(1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

**THE CONSIDERATION FOR A BILL****SEC. 27. VALUE AND HOLDER FOR VALUE.**

(1) Valuable consideration for a bill may be constituted by:

- (a) Any consideration sufficient to support a simple contract;
- (b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

**SEC. 28. ACCOMMODATION BILL OR PARTY.**

(1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

**SEC. 29. HOLDER IN DUE COURSE.**

(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions: namely,

- (a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;



- (b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

#### SEC. 30. PRESUMPTION OF VALUE AND GOOD FAITH.

(1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

(2) Every holder of a bill is *prima facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

### NEGOTIATION OF BILLS

#### SEC. 31. NEGOTIATION OF BILL.

(1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

**SEC. 32. -REQUISITES OF A VALID INDORSEMENT.**

An indorsement in order to operate as a negotiation must comply with the following conditions: namely,

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself.

(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally does not operate as a negotiation of the bill.

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

(4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature.

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

**SEC. 33. CONDITIONAL INDORSEMENT.**

Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

**SEC. 34. INDORSEMENT IN BLANK AND SPECIAL INDORSEMENT.**

(1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

**SEC. 35. RESTRICTIVE INDORSEMENT.**

(1) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay *D* only," or "Pay *D* for the account of *X*," or "Pay *D* or order for collection."

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorize him to do so.

(3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

**SEC. 36. NEGOTIATION OF OVERDUE OR DISHONoured BILL.**

(1) Where a bill is negotiable in its origin it continues to be negotiable until it has been (a) restrictively indorsed or (b) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

**SEC. 37. NEGOTIATION OF BILL TO PARTY ALREADY LIABLE THEREON.**

Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to



enforce payment of the bill against any intervening party to whom he was previously liable.

### SEC. 38. RIGHTS OF THE HOLDER.

The rights and powers of the holder of a bill are as follows:

- (1) He may sue on the bill in his own name;
- (2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;
- (3) Where his title is defective (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

### GENERAL DUTIES OF THE HOLDER

#### SEC. 39. WHEN PRESENTMENT FOR ACCEPTANCE IS NECESSARY.

- (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.
- (2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.
- (3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.
- (4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

#### SEC. 40. TIME FOR PRESENTING BILL PAYABLE AFTER SIGHT.

- (1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.
- (2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.
- (3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage

of trade with respect to similar bills, and the facts of the particular case.

**SEC. 41. RULES AS TO PRESENTMENT FOR ACCEPTANCE, AND EXCUSES FOR NON-PRESENTMENT.**

(1) A bill is duly presented for acceptance which is presented in accordance with the following rules:

- (a) The presentment must be made by or on behalf of the holder to the drawee, or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue;
- (b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only;
- (c) Where the drawee is dead presentment may be made to his personal representative;
- (d) Where the drawee is bankrupt, presentment may be made to him or to his trustee;
- (e) Where authorized by agreement or usage, a presentment through the post office is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance:

- (a) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill;
- (b) Where, after the exercise of reasonable diligence, such presentment cannot be effected;
- (c) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

**SEC. 42. NON-ACCEPTANCE.**

(1) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

**SEC. 43. DISHONOUR BY NON-ACCEPTANCE AND ITS CONSEQUENCES.**

(1) A bill is dishonoured by non-acceptance:

- (a) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or
- (b) When presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

#### SEC. 44. DUTIES AS TO QUALIFIED ACCEPTANCES.

(1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

#### SEC. 45. RULES AS TO PRESENTMENT FOR PAYMENT.

Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:

(1) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3) Presentment must be made by the holder or by some person authorized to receive payment on his behalf at a reasonable hour on a



business day, at the proper place as herein-after defined, either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4) A bill is presented at the proper place:

- (a) Where a place of payment is specified in the bill and the bill is there presented;
- (b) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;
- (c) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known;
- (d) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

(5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

(7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8) Where authorized by agreement or usage a presentment through the post office is sufficient.

#### SEC. 46. EXCUSES FOR DELAY OR NON-PRESENTMENT FOR PAYMENT.

(1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with:

- (a) Where, after the exercise of reasonable diligence presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill

- will, on presentment, be dishonoured, does not dispense with the necessity for presentment.
- (b) Where the drawee is a fictitious person.
  - (c) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.
  - (d) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.
  - (e) By waiver of presentment, express or implied.

#### SEC. 47. DISHONOUR BY NON-PAYMENT.

(1) A bill is dishonoured by non-payment (a) when it is duly presented for payment and payment is refused or cannot be obtained, or (b) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

#### SEC. 48. NOTICE OF DISHONOUR AND EFFECT OF NON-NOTICE.

Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged;

Provided that:

(1) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2) Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

#### SEC. 49. RULES AS TO NOTICE OF DISHONOUR.

Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:

(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2) Notice of dishonour may be given by an agent either in his own

name, or in the name of any party entitled to give notice whether that party be his principal or not.

(3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4) Where notice is given by or on behalf of an indorser entitled to give notice as herein-before provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

(9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

(11) Where there are two or more drawers or indorsers who are not partners notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter. In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless:

(a) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;

(b) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post



at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

(13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

#### SEC. 50. EXCUSES FOR NON-NOTICE AND DELAY.

(1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with:

- (a) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged;
- (b) By waiver, express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice;
- (c) As regards the drawer in the following cases, namely,
  - (1) where drawer and drawee are the same person,
  - (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment;
- (d) As regards the indorser in the following cases, namely,
  - (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill,
  - (2) where the indorser is the person to whom the bill

is presented for payment, (3) where the bill was accepted or made for his accommodation.

**SEC. 51. NOTING OR PROTEST OF BILL.**

(1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6) A bill must be protested at the place where it is dishonoured: Provided that:

(a) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day;

(b) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify:

- (a) The person at whose request the bill is protested;
- (b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

#### SEC. 52. DUTIES OF HOLDER AS REGARDS DRAWEE OR ACCEPTOR.

(1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

#### LIABILITIES OF PARTIES

##### SEC. 53. FUNDS IN HANDS OF DRAWEE.

(1) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.

(2) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.



**SEC. 54. LIABILITY OF ACCEPTOR.**

The acceptor of a bill, by accepting it:

- (1) Engages that he will pay it according to the tenor of his acceptance;
- (2) Is precluded from denying to a holder in due course:
  - (a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;
  - (b) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;
  - (c) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

**SEC. 55. LIABILITY OF DRAWER OR INDORSER.**

(1) The drawer of a bill by drawing it:

- (a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
- (b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill by indorsing it:

- (a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;
- (b) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;
- (c) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

**SEC. 56. STRANGER SIGNING BILL LIABLE AS INDORSER.**

Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

**SEC. 57. MEASURE OF DAMAGES AGAINST PARTIES TO DISHONoured BILL.**

Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser:

- (a) The amount of the bill;
- (b) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case;
- (c) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

(3) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

**SEC. 58. TRANSFEROR BY DELIVERY AND TRANSFEE.**

(1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery."

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

**DISCHARGE OF BILL****SEC. 59. PAYMENT IN DUE COURSE.**

(1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2) Subject to the provisions herein-after contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(a) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

#### SEC. 60. BANKER PAYING DEMAND DRAFT WHEREON INDORSEMENT IS FORGED.

When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

#### SEC. 61. ACCEPTOR THE HOLDER AT MATURITY.

When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

#### SEC. 62. EXPRESS WAIVER.

(1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

#### SEC. 63. CANCELLATION.

(1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.



(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

#### SEC. 64. ALTERATION OF BILL.

(1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers.

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

#### ACCEPTANCE AND PAYMENT FOR HONOUR

##### SEC. 65. ACCEPTANCE FOR HONOUR SUPRA PROTEST.

(1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour supra protest in order to be valid must:

(a) Be written on the bill, and indicate that it is an acceptance for honour;

(b) Be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for

whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

#### SEC. 66. LIABILITY OF ACCEPTOR FOR HONOUR.

(1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

#### SEC. 67. PRESENTMENT TO ACCEPTOR FOR HONOUR.

(1) Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

#### SEC. 68. PAYMENT FOR HONOUR SUPRA PROTEST.

(1) Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial

act of honour which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up, he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment *supra* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

#### LOST INSTRUMENTS

##### SEC. 69. HOLDER'S RIGHT TO DUPLICATE OF LOST BILL.

Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so.

##### SEC. 70. ACTION ON LOST BILL.

In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

#### BILL IN A SET

##### SEC. 71. RULES AS TO SETS.

(1) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2) Where the holder of a set indorses two or more parts to differ-



ent persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

## CONFLICT OF LAWS

### SEC. 72. RULES WHERE LAWS CONFLICT.

Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra protest*, is determined by the law of the place where such contract was made.

Provided that:

- (a) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;
- (b) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

(2) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

(3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(5) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

### PART III

#### CHEQUES ON A BANKER

##### SEC. 73. CHEQUE DEFINED.

A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

##### SEC. 74. PRESENTMENT OF CHEQUE FOR PAYMENT.

Subject to the provisions of this Act:

(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

(2) In determining what is a reasonable time regard shall be had

to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

#### SEC. 75. REVOCATION OF BANKER'S AUTHORITY.

The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by:

- (1) Countermand of payment;
- (2) Notice of customer's death.

### CROSSED CHEQUES

#### SEC. 76. GENERAL AND SPECIAL CROSSINGS DEFINED.

(1) Where a cheque bears across its face an addition of: (a) the words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or (b) two parallel transverse lines simply, either with or without the words "not negotiable"; that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

#### SEC. 77. CROSSING BY DRAWER OR AFTER ISSUE.

(1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

#### SEC. 78. CROSSING A MATERIAL PART OF CHEQUE.

A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing.



**SEC. 79. DUTIES OF BANKER AS TO CROSSED CHEQUES.**

(1) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

**SEC. 80. PROTECTION TO BANKER AND DRAWER WHERE CHEQUE IS CROSSED.**

Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

**SEC. 81. EFFECT OF CROSSING ON HOLDER.**

Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

**SEC. 82. PROTECTION TO COLLECTING BANKER.**

Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to

himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

## PART IV

### PROMISSORY NOTES

#### SEC. 83. PROMISSORY NOTE DEFINED.

(1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

#### SEC. 84. DELIVERY NECESSARY.

A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

#### SEC. 85. JOINT AND SEVERAL NOTES.

(1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenor.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

#### SEC. 86. NOTE PAYABLE ON DEMAND.

(1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

**SEC. 87. PRESENTMENT OF NOTE FOR PAYMENT.**

(1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

**SEC. 88. LIABILITY OF MAKER.**

The maker of a promissory note by making it:

- (1) Engages that he will pay it according to its tenor;
- (2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

**SEC. 89. APPLICATION OF PART II TO NOTES.**

(1) Subject to the provisions in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes; namely, provisions relating to:

- (a) Presentment for acceptance;
- (b) Acceptance;
- (c) Acceptance *supra* protest;
- (d) Bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

**PART V  
SUPPLEMENTARY**

**SEC. 90. GOOD FAITH.**

A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.



**SEC. 91. SIGNATURE.**

(1) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

**SEC. 92. COMPUTATION OF TIME.**

Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

“Non-business days” for the purposes of this Act mean:

(a) Sunday, Good Friday, Christmas Day;

(b) A bank holiday under the Bank Holidays Act, 1871, or acts amending it;

(c) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

**SEC. 93. WHEN NOTING EQUIVALENT TO PROTEST.**

For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

**SEC. 94. PROTEST WHEN NOTARY NOT ACCESSIBLE.**

Where a dishonoured bill or note is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule 1 to this Act may be used with necessary modifications, and if used shall be sufficient.

**SEC. 95. DIVIDEND WARRANTS MAY BE CROSSED.**

The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

**SEC. 96. REPEAL.**

The enactments mentioned in the second schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

**SEC. 97. SAVINGS.**

(1) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.

(2) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(3) Nothing in this Act or in any repeal effected thereby shall affect:

- (a) The provisions of the Stamp Act, 1870,<sup>7</sup> or acts amending it, or any law or enactment for the time being in force relating to the revenue;
- (b) The provisions of the Companies Act, 1862,<sup>8</sup> or acts amending it, or any act relating to joint stock banks or companies;
- (c) The provisions of any act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively;
- (d) The validity of any usage relating to dividend warrants, or the indorsements thereof.

**SEC. 98. SAVING OF SUMMARY DILIGENCE IN SCOTLAND.**

Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

**SEC. 99. CONSTRUCTION WITH OTHER ACTS, ETC.**

Where any act or document refers to any enactment repealed by this Act, the act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

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<sup>7</sup> 33 & 34 Vict. ch. 97.

<sup>8</sup> 25 & 26 Vict. ch. 89.

## SEC. 100. PAROLE EVIDENCE IN JUDICIAL PROCEEDINGS IN SCOTLAND.

In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

## SCHEDULES

FIRST SCHEDULE<sup>9</sup>

Form of protest which may be used when the services of a notary cannot be obtained.

Know all men that I, *A B* [householder], of                      in the county of                      , in the United Kingdom, at the request of *C D*, there being no notary public available, did on the                      day of                      188                      at                      demand payment [or acceptance] of the bill of exchange hereunder written, from *E F*, to which demand he made answer [state answer, if any] wherefore, I now, in the presence of *G H* and *J K* do protest the said bill of exchange.

(Signed)                      *A B*

*G H* }  
*J K* } Witnesses.

N. B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

<sup>9</sup> The other schedules are purely local in interest, and are therefore omitted.—ED.



## C. CONVENTION OF THE HAGUE AND THE UNIFORM LAW

### I. CONVENTION SUR L'UNIFICATION DU DROIT RELATIF À LA LETTRE DE CHANGE ET AU BILLET À ORDRE.

(La convention devant rester ouverte à la signature jusqu'au trente et un juillet 1913, les Puissances signataires et Leurs plénipotentiaires ne seront inscrits qu'à cette date.)

Considérant qu'il importe au plus haut point de rendre les relations commerciales entre les peuples toujours plus faciles et plus sûres,

Considérant que la lettre de change joue dans ces relations un rôle essentiel,

Qu'elle rend des services signalés en évitant le transports de numéraire, en facilitant le règlement de toutes les dettes internationales publiques ou privées,

Mais considérant que des difficultés s'élèvent fréquemment à raison des législations différentes des pays dans lesquels une lettre de change est appelée à circuler,

Que le commerce aurait grand intérêt à pouvoir se servir d'un titre soumis à des règles uniformes pour sa création, sa circulation et son paiement,

Qu'il aurait ainsi à sa disposi-

### I. CONVENTION ON THE UNIFICATION OF THE LAW RELATING TO BILLS OF EXCHANGE AND PROMISSORY NOTES.

(As the Convention is to remain open for signature until July 31, 1913, the names of the signatory powers and their plenipotentiaries will not be inserted until that date.)

Whereas it is of the highest importance that the commercial relations between the nations be rendered more easy and certain;

And whereas bills of exchange play an essential part in these relations, rendering signal service by avoiding the transfer of money, and facilitating the settlement of all international debts, whether public or private;

And whereas difficulties frequently arise by reason of the conflicting laws of the countries in which bills of exchange may circulate;

And commerce is greatly interested in being able to employ an instrument subject to uniform rules for its issue, circulation, and payment, and to have at its command a species of currency the legal value of which it may readily understand;

tion une sorte de monnaie dont il lui serait aisé d'apprécier la valeur juridique,

Ont nommé pour leurs plénipotentiaires, savoir :

(Dénomination des plénipotentiaires.)

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes :

#### Article premier.

Les États contractants s'engagent à introduire dans leurs territoires respectifs, soit dans le texte original, soit dans leurs langues nationales, le Règlement ci-annexé concernant la lettre de change et le billet à ordre, qui devra entrer en vigueur en même temps que la présente convention.

Cet engagement s'étend, à moins d'une réserve générale ou spéciale, aux colonies, possessions ou protectorats et aux circonscriptions consulaires judiciaires des États contractants, dans la mesure où leurs lois métropolitaines s'y appliquent.

#### Article 2.

Par dérogation à l'article premier 1°, du Règlement, chaque État contractant peut prescrire que des lettres de change créées sur son territoire, qui ne contiennent pas la dénomination de *lettre de change*, sont valables, pourvu qu'elles contiennent l'in-

There have been named as plenipotentiaries the following:

[Names of plenipotentiaries]

Who, after having exhibited to each other their credentials, which were found to be in proper form, have agreed upon the following provisions:

#### Article 1.

The contracting states agree to introduce within their respective countries, either in the original text, or in their national languages, the Uniform Law hereto annexed concerning bills of exchange and promissory notes, which shall become effective at the same time as the present Convention.

This agreement shall extend, in the absence of a general or special reservation, to the colonies, possessions, or protectorates, and to the jurisdiction of the consular courts of the contracting states, in so far as the laws of the mother country apply to them.

#### Article 2.

In derogation from article 1, subdivision 1, of the Uniform Law, each contracting state may prescribe that bills of exchange issued within its territory which do not contain the designation "bills of exchange," shall be valid, provided they contain the

dication expresse qu'elles sont à  
*ordre.*

express indication that they are  
payable to order.

#### Article 3.

Chaque État contractant a, pour les engagements pris en matière de lettre de change sur son territoire, la faculté de déterminer de quelle manière il peut être suppléé à la signature elle-même, pourvu qu'une déclaration authentique inscrite sur la lettre de change constate la volonté de celui qui aurait dû signer.

#### Article 3.

Each contracting state has, as regards obligations assumed relative to bills of exchange within its territory, the power to determine the manner of providing a substitute for signature, provided that a formal declaration inscribed on the bill of exchange verifies the intention of the person who should have signed.

#### Article 4.

Chaque État contractant a la faculté de prescrire, par dérogation à l'article 18 du Règlement, que, pour un endossement fait sur son territoire, la mention impliquant un nantissement sera réputée non écrite.

Dans ce cas, la mention sera également considérée comme non écrite par les autres États.

#### Article 4.

Each contracting state may prescribe, in derogation from article 18 of the Uniform Law, that, in an indorsement made within its territory, any statement implying a pledge shall be deemed not written.

In such case the statement shall also be deemed not written in the other states.

#### Article 5.

Par dérogation à l'article 30, alinéa 1, du Règlement, chaque Etat contractant a la faculté de prescrire qu'un aval pourra être donné sur son territoire par un acte séparé indiquant le lieu où il est intervenu.

#### Article 5.

In derogation from article 30, paragraph 1, of the Uniform Law, each contracting state may prescribe that a guaranty may be given within its territory in a separate document indicating the place where it is given.

#### Article 6.

Par dérogation à l'article 32 du Règlement, chaque État contractant a la faculté d'admettre des lettres payables en foire sur son territoire et de fixer la date de leur échéance.

#### Article 6.

In derogation from article 32 of the Uniform Law, each contracting state may allow within its territory bills payable at a fair and fix the date of their maturity.



Ces lettres seront reconnues  
valables par les autres États.

Such bills shall be recognized  
as valid by the other states.

#### Article 7.

Chaque État contractant peut compléter l'article 37 du Règlement en ce sens que, pour une lettre de change payable sur son territoire, le porteur sera obligé de la présenter le jour même de l'échéance; l'inobservation de cette obligation ne devra donner lieu qu'à des dommages-intérêts.

Les autres États auront la faculté de déterminer les conditions sous lesquelles ils reconnaîtront une telle obligation.

#### Article 7.

Each contracting state may supplement article 37 of the Uniform Law in such a way that, as regards bills of exchange payable within its territory, the holder shall be bound to make presentment on the very day of their maturity. The failure to observe this obligation shall give rise only to damages.

The other states may determine the conditions under which they will recognize such an obligation.

#### Article 8.

Par dérogation à l'article 38, alinéa 2, du Règlement, chaque État contractant peut, pour les titres payables sur son territoire, autoriser le porteur à refuser un paiement partiel.

Le droit ainsi accordé au porteur doit être reconnu par les autres États.

#### Article 8.

In derogation from article 38, paragraph 2, of the Uniform Law, each contracting state may authorize the holder to refuse partial payment of instruments payable within its territory.

The right thus accorded to the holder shall be recognized by the other states.

#### Article 9.

Chaque État contractant a la faculté de prescrire qu'avec l'assentiment du porteur, les protêts à dresser sur son territoire peuvent être remplacés par une déclaration datée et écrite sur la lettre de change elle-même, signée par le tiré et transcrite sur un registre public dans le délai fixé pour les protêts.

Une telle déclaration sera reconnue par les autres États.

#### Article 9.

Each contracting state may prescribe that, with the assent of the holder, protests to be drawn up within its territory may be replaced by a declaration dated and written upon the bill of exchange itself, signed by the drawee, and transcribed in a public register within the time fixed for protests.

Such a declaration shall be recognized by the other states.

## Article 10.

Par dérogation à l'article 43, alinéa 2, du Règlement, chaque État contractant a la faculté de prescrire, soit que le protêt faute de paiement doit être dressé le premier jour ouvrable qui suit celui où le paiement peut être exigé, soit qu'il doit être dressé dans les deux jours ouvrables qui suivent.

## Article 11.

Chaque État contractant a la faculté de prescrire que l'avis du non paiement, prévu par l'article 44, alinéa 1, du Règlement pourra être donné par l'officier public chargé de dresser le protêt.

## Article 12.

Chaque État contractant a la faculté de prescrire que les intérêts dont il est question à l'article 47, alinéa 1, 2°, et à l'article 48, 2°, du Règlement, seront de six pour cent pour les lettres de change qui sont à la fois émises et payables sur son territoire. Cette disposition sera reconnue par les autres États.

Le taux de l'intérêt à courir à partir d'une action en justice est déterminé librement par la législation de l'État où l'action est intentée. Toutefois, le défendeur ne peut réclamer le remboursement des intérêts qu'il a payés que jusqu'à concurrence du taux ordinaire de cinq ou de six pour cent.

## Article 10.

In derogation from article 43, paragraph 2, of the Uniform Law, each contracting state may prescribe either that protests for non-payment must be drawn up on the first business day following that on which payment may be demanded, or that they may be drawn up within the two succeeding business days.

## Article 11.

Each contracting state may prescribe that the notice of non-payment provided for by article 44, paragraph 1, of the Uniform Law, may be given by the public officer charged with drawing up the protest.

## Article 12.

Each contracting state may prescribe that the interest referred to in article 47, paragraph 1, subdivision 2, and in article 48, subdivision 2, of the Uniform Law, shall be at the rate of 6 per cent for bills of exchange which are both issued and payable within its territory. This provision shall be recognized by the other states.

The rate of interest running from the commencement of an action at law is determined by the law of the state where the action is brought. The defendant shall not claim reimbursement, however, of the interest which he has paid beyond the ordinary rate of 5 or 6 per cent.

## Article 13

Chaque État contractant est libre de décider que, dans le cas de déchéance ou de prescription, il subsistera sur son territoire une action contre le tireur qui n'a pas fait provision ou contre un tireur ou un endosseur qui se seraient enrichis injustement. La même faculté existe, en cas de prescription, en ce qui concerne l'accepteur qui a reçu provision ou se serait enrichi injustement.

## Article 14.

La question de savoir si le tireur est obligé de fournir provision à l'échéance et si le porteur a des droits spéciaux sur cette provision reste en dehors du Règlement et de la présente Convention.

## Article 15.

Chaque État contractant peut, pour le cas d'une lettre de change payable sur son territoire, régler les conséquences de la perte de cette lettre, notamment au point de vue de l'émission d'une nouvelle lettre, du droit d'obtenir le paiement ou de faire ouvrir une procédure d'annulation.

Les autres Etats ont la faculté de déterminer les conditions sous lesquelles ils reconnaîtront les décisions judiciaires rendues en conformité de l'alinéa précédent.

## Article 16.

C'est à la législation de chaque Etat qu'il appartient de déterminer les causes d'interruption et

## Article 13.

Each contracting state is free to decide, in case of prescription or loss of recourse, whether there shall lie within its territory an action against a drawer who has not provided cover or against a drawer or indorser who has been unjustly enriched. The same privilege shall exist in case of prescription as regards the acceptor who has received cover or has been unjustly enriched.

## Article 14.

The question whether the drawer is bound to provide cover at maturity, and whether the holder has special rights with reference to such cover, shall be outside of the Uniform Law and of the present Convention.

## Article 15.

Each contracting state may, as regards bills of exchange payable in its territory, regulate the consequences of the loss of such bill, especially with reference to the issue of a new bill, or the right to obtain payment or to begin legal process for annulling such bill.

The other states may determine the conditions under which they will recognize the judicial decisions rendered in conformity with the preceding paragraph.

## Article 16.

The law of each state determines the causes of interruption or suspension of prescription as



de suspension de la prescription des actions résultant d'une lettre de change dont ses tribunaux ont à connaître.

Les autres États ont la faculté de déterminer les conditions auxquelles ils reconnaîtront de pareilles causes. Il en est de même de l'effet d'une action comme moyen de faire courir le délai de prescription prévu par l'article 70, alinéa 3, du Règlement.

#### Article 17.

Chaque État contractant a la faculté de prescrire que certains jours ouvrables seront assimilés aux jours fériés légaux en ce qui concerne la présentation à l'acceptation ou au paiement et tous autres actes relatifs à la lettre de change.

#### Article 18.

Chaque État contractant a la faculté de ne pas reconnaître la validité de l'engagement pris en matière de lettre de change par l'un de ses ressortissants et qui ne serait tenu pour valable dans le territoire des autres États contractants que par application de l'article 74, alinéa 2, du Règlement.

#### Article 19.

Les États contractants ne peuvent subordonner à l'observation des dispositions sur le timbre la validité des engagements pris en matière de lettre de change ou l'exercice des droits qui en découlent.

regards actions on bills of exchange which fall within the jurisdiction of its courts.

The other states may determine the conditions under which they will recognize such causes. The same rule shall apply to the effect of an action as starting the time of prescription to run which is provided for by article 70, paragraph 3, of the Uniform Law.

#### Article 17.

Each contracting state may prescribe that certain business days shall be assimilated to legal holidays as regards presentment for acceptance or for payment and all other acts relating to bills of exchange.

#### Article 18.

Each contracting state may refuse to recognize the validity of an obligation entered into with respect to bills of exchange by one within its jurisdiction which would not be regarded as valid within the territory of the other contracting states except by application of article 74, paragraph 2, of the Uniform Law.

#### Article 19.

The contracting states cannot subordinate the validity of obligations entered into with respect to bills of exchange or the exercise of rights derived therefrom, to a compliance with stamp tax regulations.

Ils peuvent, toutefois, suspendre l'exercice de ces droits jusqu'à l'acquittement des droits de timbre qu'ils ont prescrits. Ils peuvent également décider que la qualité et les effets de titre immédiatement exécutoire qui, d'après leurs législations, seraient attribués à la lettre de change, seront subordonnés à la condition que le droit de timbre ait été, dès la création du titre, dûment acquitté conformément aux dispositions de leurs lois.

#### Article 20.

Les États contractants se réservent la faculté de ne pas appliquer les principes de droit international privé consacrés par la présente Convention ou par le Règlement en tant qu'il s'agit :

1°. d'un engagement pris hors des territoires des États contractants.

2°. d'une loi qui serait applicable d'après ces principes et qui ne serait pas celle d'un des États contractants.

#### Article 21.

Les dispositions des articles 2 à 13 et 15 à 20, relatives à la lettre de change, s'appliquent également au billet à ordre.

#### Article 22.

Chaque État contractant se réserve la faculté de restreindre l'engagement mentionné dans l'article premier aux seules dispositions sur la lettre de change et de ne pas introduire sur son

They may, however, suspend the exercise of such rights until the payment of the prescribed stamp taxes. They may also provide that the quality and effects of being an instrument subject to immediate execution, which bills of exchange may possess according to their laws, shall be subject to the condition that the stamp tax has been duly paid at the time of the issue of the instrument in accordance with the provisions of their laws.

#### Article 20.

The contracting states reserve the right not to apply the principles of private international law sanctioned by the present Convention or by the Uniform Law so far as concerns :

1. An obligation entered into outside the territories of the contracting states,

2. A law which would be applicable according to these principles and which is not that of one of the contracting states.

#### Article 21.

The provisions of articles 2 to 13 and 15 to 20, concerning bills of exchange, shall apply equally to promissory notes.

#### Article 22.

Each contracting state reserves the right to restrict the obligation mentioned in article 1 to the provisions concerning bills of exchange, and not to introduce within its territory the provisions

territoire les dispositions sur le billet à ordre contenues dans le titre II du Règlement. Dans ce cas, l'État qui a profité de cette réserve, ne sera considéré comme État contractant que pour ce qui concerne la lettre de change.

Chaque État se réserve également la faculté de faire des dispositions concernant le billet à ordre un Règlement spécial qui sera entièrement conforme aux stipulations du titre II du Règlement et qui reproduira les règles sur la lettre de change auxquelles il est renvoyé, sous les seules modifications résultant des articles 77, 78, 79 et 80 du Règlement et de l'article 21 de la présente Convention.

#### Article 23.

Les États contractants s'obligent à ne pas changer l'ordre des articles du Règlement par l'introduction des modifications ou additions auxquelles ils sont autorisés.

#### Article 24.

Les États contractants communiqueront au Gouvernement des Pays-Bas toutes les dispositions qu'ils édicteront en vertu de la présente convention ou en exécution du Règlement.

De même, les États communiqueront audit Gouvernement les termes qui, dans les langues reconnues sur leur territoire, correspondent à la dénomination de *lettre de change* et de *billet à ordre*. Lorsqu'il s'agit d'une

concerning promissory notes contained in title II of the Uniform Law. In this event, the state which has availed itself of this reservation shall be considered as a contracting state only as regards bills of exchange.

Each state also reserves the right to make provisions concerning promissory notes, by a special law which shall be in conformity in every respect with the provisions of title II of the Uniform Law, and which shall reproduce the rules on bills of exchange to which reference is made, with only the modifications resulting from articles 77, 78, 79, and 80 of the Uniform Law, and of article 21 of the present Convention.

#### Article 23.

The contracting states agree not to change the order of the articles of the Uniform Law in introducing modifications or additions which they are authorized to make.

#### Article 24.

The contracting states shall communicate to the Government of the Netherlands all the provisions which they may enact under the present Convention or in carrying out the Uniform Law.

The states shall likewise communicate to the said government the terms which, in the languages recognized within the territory, correspond to the designations "bill of exchange" and "promissory note." When the same lan-



même langue, les États intéressés s'entendront entre eux, autant que possible, sur le choix d'un seul et même terme.

Les États notifieront, en outre, audit Gouvernement la liste des jours fériés légaux et des autres jours où le paiement ne peut être exigé dans leurs pays respectifs.

Les États où une loi autre que la loi nationale est déclarée compétente pour déterminer la capacité de leurs ressortissants de s'engager par lettre de change, auront également soin d'en informer le Gouvernement des Pays-Bas.

Le Gouvernement des Pays-Bas fera connaître immédiatement à tous les autres États contractants les indications qui lui auront été données en vertu des alinéas précédents.

#### Article 25.

La présente convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à la Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les Représentants des États qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement des Pays-Bas et

guage is used in two or more states they shall agree among themselves, as far as possible, upon the choice of one and the same term.

The states shall also submit to the said government a list of the legal holidays and other days on which payment cannot be demanded within the respective territories.

The states in which a law other than the national law is declared competent to determine the capacity of persons subject to their jurisdiction to bind themselves by bill of exchange shall give notice thereof likewise to the Government of the Netherlands.

The Government of the Netherlands shall immediately transmit to all the other contracting states the information which it has received by virtue of the preceding paragraphs.

#### Article 25.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be attested in a document signed by the representatives of the states which shall take part therein and by the Minister of Foreign Affairs of the Netherlands.

The subsequent deposits of ratifications shall be made by means of a written notification

accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification qui les accompagnent, sera immédiatement, par les soins du Gouvernement des Pays-Bas et par la voie diplomatique, remise aux États qui ont signé la présente convention ou qui y auront adhéré. Dans les cas visés par l'alinéa précédent, ledit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

#### Article 26.

Les Etats non signataires pourront adhérer à la présente convention, qu'ils aient été ou non représentés aux Conférences internationales de la Haye pour l'Unification du Droit relatif à la Lettre de Change et au Billet à Ordre.

L'État qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion qui sera déposé dans les Archives audit Gouvernement.

Le Gouvernement des Pays-Bas transmettra immédiatement à tous les États qui ont signé la présente convention ou qui y

addressed to the Government of the Netherlands and accompanied by the instrument of ratification.

A certified copy of the document relating to the first deposit of ratifications and of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification accompanying them, shall be transmitted immediately, through the good offices of the Government of the Netherlands and through diplomatic channels, to the states which have signed the present Convention or which shall become parties thereto. In the cases mentioned in the preceding paragraph the said government shall inform them at the same time of the date on which it has received the notification.

#### Article 26.

States which are not signatories may become parties to the present Convention, whether represented or not at the International Conferences of the Hague for the Unification of the Law Relating to Bills of Exchange and Promissory Notes.

A state wishing to adhere shall notify the Government of the Netherlands of its intention in writing by transmitting the act of adhesion, which shall be deposited in the archives of said government.

The Government of the Netherlands shall immediately transmit to all states which have signed the

auront adhéré, copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

#### Article 27.

La présente convention produira effet, pour les États qui auront participé au premier dépôt de ratifications, six mois après la date du procès-verbal de ce dépôt et, pour les États qui la ratifieront ultérieurement ou qui y adhéreront, six mois après que les notifications prévues dans l'article 25, alinéa 4, et dans l'article 26, alinéa 2, auront été reçues par le Gouvernement des Pays-Bas.

#### Article 28.

S'il arrivait qu'un des États contractants voulût dénoncer la présente Convention, la dénonciation sera notifiée, par écrit, au Gouvernement des Pays-Bas qui communiquera immédiatement copie certifiée conforme de la notification à tous les autres États en leur faisant connaître la date à laquelle il l'a reçue.

La dénonciation, qui ne pourra se faire qu'après un délai de trois ans à partir de la date du premier dépôt des ratifications, produira ses effets à l'égard de l'État seul qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

present Convention, or which shall become parties thereto, a certified copy of the notification, as well as the act of adhesion, with an indication of the date when it received such notification.

#### Article 27.

The present Convention shall take effect for the states which have taken part in the first deposit of ratifications, six months from the date of the document attesting such deposit, and for the states which ratify later or become parties thereto, six months after receipt by the Government of the Netherlands of the notifications referred to in article 25, paragraph 4, and in article 26, paragraph 2.

#### Article 28.

If it should happen that one of the contracting states should desire to denounce the present Convention, such denunciation shall be communicated in writing to the Government of the Netherlands, which shall immediately transmit a certified copy of the notification to all the other states, informing them of the date when it was received.

The denunciation, which cannot take place until three years after the date of the first deposit of ratifications, shall be effective only as regards the state which shall have given notice thereof, and one year after the notification shall have reached the Government of the Netherlands.



## Article 29.

L'État qui désire profiter d'une des réserves mentionnées dans l'article premier, alinéa 2, ou dans l'article 22, alinéa 1, doit l'insérer dans l'acte de ratification ou d'adhésion. S'il désire ultérieurement renoncer à cette réserve il notifie par écrit son intention au Gouvernement des Pays-Bas; en ce cas, les dispositions de l'article 26, alinéa 3, et de l'article 27 sont applicables.

L'État contractant qui, postérieurement, désire profiter d'une des réserves ci-dessus mentionnées notifie par écrit son intention au Gouvernement des Pays-Bas; sont applicables à cette notification les dispositions de l'article 28.

## Article 30.

Après un délai de deux ans à partir du premier dépôt des ratifications, cinq États contractants peuvent adresser une demande motivée au Gouvernement des Pays-Bas à l'effet de provoquer la réunion d'une conférence qui délibérerait sur la question de savoir s'il y a lieu d'introduire des additions ou des modifications dans le Règlement ou la présente Convention.

En l'absence d'une telle demande, le Gouvernement des Pays-Bas prendra soin de convoquer une conférence dans le but indiqué après l'expiration d'un délai de cinq ans à partir du premier dépôt des ratifications.

## Article 29.

A state desiring to avail itself of any of the reservations mentioned in article 1, paragraph 2, or in article 22, paragraph 1, must insert such reservation in the act of ratification or adhesion. If it desires subsequently to renounce this reservation, it shall notify the Government of the Netherlands of such intention in writing; in such case the provisions of article 26, paragraph 3, and of article 27, shall be applicable.

A contracting state which subsequently desires to avail itself of any of the reservations above mentioned must notify the Government of the Netherlands of its intention in writing. The provisions of article 28 shall apply to this notification.

## Article 30.

Two years after the first deposit of ratifications any five contracting states may address a request, specifying reasons, to the Government of the Netherlands for the purpose of calling a conference to deliberate on the question whether there shall be made additions to or modifications of the Uniform Law or the present Convention.

In the absence of such a request the Government of the Netherlands shall call the conference for the aforesaid purpose after the lapse of five years from the first deposit of ratifications.

## Article 31.

La présente Convention qui portera la date du vingt-trois juillet 1912, pourra être signée à la Haye, jusqu'au trente et un juillet 1913, par les Plénipotentiaires des Puissances représentées à la première ou à la deuxième Conférence internationale pour l'unification du droit relatif à la lettre de change et au billet à ordre.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Convention de leurs signatures et y ont apposé leurs cachets.

Fait à la Haye, le vingt-trois juillet mil neuf cent douze, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont une copie certifiée conforme sera remise, par la voie diplomatique, à chacun des Gouvernements représentés à la conférence.

## II. RÈGLEMENT UNIFORME SUR LA LETTRE DE CHANGE ET LE BILLET À ORDRE.

### TITRE PREMIER.—DE LA LETTRE DE CHANGE.

#### Chapitre Premier.

#### *De la création et de la forme de la lettre de change.*

##### Article premier.

La lettre de change contient :

1°. la dénomination de lettre de change insérée dans le texte même du titre et exprimée dans

## Article 31.

The present Convention, which shall bear the date of July 23, 1912, may be signed at The Hague until July 31, 1913, by the plenipotentiaries of the powers represented at the first or at the second International Conference for the Unification of the Law Relating to Bills of Exchange and Promissory Notes.

Wherefore, the plenipotentiaries have signed the present Convention and have affixed their seals thereto.

Done at The Hague the 23d of July, 1912, in a single instrument which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the governments represented at the conference.

## II. UNIFORM LAW ON BILLS OF EXCHANGE AND PROMISSORY NOTES.

### TITLE I.—BILLS OF EXCHANGE.

#### *Chapter I.*

#### *The Issue and Form of Bills of Exchange.*

##### Article 1.

A bill of exchange must contain :

1. The designation as a bill of exchange inserted in the body of the instrument itself and ex-

la langue employée pour la rédaction de ce titre.

2°. le mandat pur et simple de payer une somme déterminée.

3°. le nom de celui qui doit payer (tiré).

4°. l'indication de l'échéance.

5°. celle du lieu où le paiement doit s'effectuer.

6°. le nom de celui auquel ou à l'ordre duquel le paiement doit être fait.

7°. l'indication de la date et du lieu où la lettre est créée.

8°. la signature de celui qui émet la lettre (tireur).

pressed in the language used in the execution of such instrument;

2. An unconditional order to pay a certain sum;

3. The name of the party who is to pay (drawee);

4. An indication of the day of maturity;

5. An indication of the place where payment is to be made;

6. The name of the party to whom, or to whose order, payment is to be made;

7. An indication of the date and of the place where the bill is issued;

8. The signature of the party who issues the bill (drawer).

#### Article 2.

Le titre dans lequel une des énonciations indiquées à l'article précédent fait défaut, ne vaut pas comme lettre de change, sauf dans les cas déterminés par les alinéas suivants.

La lettre de change dont l'échéance n'est pas indiquée, est considérée comme payable à vue.

A défaut d'indication spéciale, le lieu désigné à côté du nom du tiré est réputé être le lieu de paiement et, en même temps, le lieu du domicile du tiré.

La lettre de change n'indiquant pas le lieu de sa création est considérée comme souscrite dans le lieu désigné à côté du nom du tireur.

#### Article 2.

An instrument in which any one of the requirements indicated in the preceding article is wanting, is not valid as a bill of exchange, except in the cases mentioned in the following paragraphs:

A bill of exchange in which the time of payment is not indicated is deemed payable at sight.

In the absence of a special indication, the place designated beside the name of the drawee is deemed the place of payment and at the same time the place of the drawee's domicile.

A bill of exchange which does not indicate the place of its issue is deemed drawn in the place designated beside the name of the drawer.



## Article 3.

La lettre de change peut être à l'ordre du tireur lui-même.

Elle peut être tirée sur le tireur lui-même.

Elle peut être tirée pour le compte d'un tiers.

## Article 4.

Une lettre de change peut être payable au domicile d'un tiers, soit dans le lieu du domicile du tiré, soit dans un autre lieu, (lettre de change domiciliée).

## Article 5.

Dans une lettre de change payable à vue ou à un certain délai de vue, il peut être stipulé par le tireur que la somme sera productive d'intérêts. Dans toute autre lettre de change, cette stipulation est réputée non écrite.

Le taux des intérêts doit être indiqué dans la lettre; à défaut de cette indication, il est de cinq pour cent.

Les intérêts courent à partir de la date de la lettre de change, si une autre date n'est indiquée.

## Article 6.

La lettre de change dont le montant est écrit à la fois en toutes lettres et en chiffres, vaut, en cas de différence, pour la somme écrite en toutes lettres.

La lettre de change dont le montant est écrit plusieurs fois, soit en toutes lettres, soit en chiffres, ne vaut, en cas de différence, que pour la moindre somme.

## Article 3.

A bill of exchange may be payable to the order of the drawer himself.

It may be drawn upon the drawer itself.

It may be drawn for the account of a third party.

## Article 4.

A bill of exchange may be payable at the domicile of a third party, either in the place where the drawee is domiciled or in another place (domiciled bill of exchange).

## Article 5.

In a bill of exchange payable at sight or at a certain time after sight, it may be stipulated by the drawer that the sum shall bear interest. In any other bill of exchange this stipulation shall be deemed not written.

The rate of interest must be indicated in the bill; in the absence of such an indication, it is 5 per cent.

Interest runs from the date of the bill of exchange, if no other date is indicated.

## Article 6.

A bill of exchange of which the amount is written both in words and in figures is valid in case of discrepancy for the sum written in words.

A bill of exchange of which the amount is written several times, either in words or in figures, is valid in case of discrepancy only for the smaller sum.

## Article 7.

Si une lettre de change porte la signature de personnes incapables de s'obliger, les obligations des autres signataires n'en sont pas moins valables.

## Article 7.

If a bill of exchange bears the signature of parties having no capacity to contract, the obligations of other signers are none the less valid.

## Article 8.

Quiconque appose sa signature sur une lettre de change, comme représentant d'une personne pour laquelle il n'avait pas le pouvoir d'agir, est obligé lui-même en vertu de la lettre. Il en est ainsi du représentant qui a dépassé ses pouvoirs.

## Article 8.

Whoever places his signature on a bill of exchange as agent of a person for whom he has no authority to act is himself liable on the bill. The same rule applies to an agent who has exceeded his authority.

## Article 9.

Le tireur est garant de l'acceptation et du paiement.

Il peut s'exonérer de la garantie de l'acceptation; toute clause par laquelle il s'exonère de la garantie du paiement est réputée non écrite.

## Article 9.

The drawer guarantees acceptance and payment.

He may exclude his liability as guarantor of acceptance. Any stipulation excluding his liability as guarantor of payment shall be deemed not written.

## Chapitre II.

*De l'endossement.*

## Article 10.

Toute lettre de change, même non expressément tirée à ordre, est transmissible par la voie de l'endossement.

Lorsque le tireur a inséré dans la lettre de change les mots "non à ordre" ou une expression équivalente, le titre n'est transmissible que dans la forme et avec les effets d'une cession ordinaire.

L'endossement peut être fait même au profit du tiré, accepteur ou non, du tireur ou de tout

*Chapter II.**Indorsement.*

## Article 10.

Any bill of exchange, even if not expressly drawn to order, shall be transferable by means of indorsement.

When the drawer has inserted in a bill of exchange the words "not to order," or any equivalent expression, the instrument is transferable only in the form and with the effect of an ordinary assignment.

An indorsement may be for the benefit of the drawee, whether he

autre obligé. Ces personnes peuvent endosser la lettre à nouveau.

be an acceptor or not; for the benefit of the drawer or of any other party liable. These parties may again indorse the bill.

#### Article 11.

L'endossement doit être pur et simple. Toute condition à laquelle il est subordonné est réputée non écrite.

L'endossement partiel est nul.

Est également nul l'endossement "au porteur."

#### Article 11.

The indorsement must be unconditional. Any condition to which it is made subject shall be deemed not written.

A partial indorsement shall be void.

An indorsement to bearer shall also be void.

#### Article 12.

L'endossement doit être écrit sur la lettre de change ou sur une feuille qui y est rattachée (*allonge*). Il doit être signé par l'endosseur.

L'endossement est valable alors même que le bénéficiaire n'y serait pas désigné ou que l'endosseur se serait borné à apposer sa signature au dos de la lettre de change ou d'une *allonge* (*endossement en blanc*).

#### Article 12.

The indorsement must be written on the bill of exchange or on a sheet attached thereto (*allonge*). It must be signed by the indorser.

An indorsement is valid although the indorser is not designated or although the indorser has simply placed his signature on the back of the bill of exchange or on an *allonge* (indorsement in blank).

#### Article 13.

L'endossement transmet tous les droits résultant de la lettre de change.

Si l'endossement est en blanc, le porteur peut :

1°. remplir le blanc, soit de son nom, soit du nom d'une autre personne ;

2°. endosser la lettre de nouveau en blanc ou à une autre personne ;

3°. remettre la lettre à un tiers, sans remplir le blanc et sans l'endosser.

#### Article 13.

The indorsement transfers all the rights arising from the bill of exchange.

If the indorsement is in blank, the holder may :

1. Fill in the blank either with his own name or with the name of another party ;

2. Indorse the bill again in blank over to another party ;

3. Deliver the bill to a third party without filling in the blank and without indorsing it.



## Article 14.

L'endosseur est, sauf clause contraire, garant de l'acceptation et du paiement.

Il peut interdire un nouvel endossement; dans ce cas, il n'est pas tenu à la garantie envers les personnes auxquelles la lettre est ultérieurement endossée.

## Article 15.

Le détenteur d'une lettre de change est considéré comme porteur légitime s'il justifie de son droit par une suite ininterrompue d'endossements, même si le dernier endossement est en blanc. Quand un endossement en blanc est suivi d'un autre endossement, le signataire de celui-ci est réputé avoir acquis la lettre par l'endossement en blanc. Les endossements biffés sont réputés non avenus.

Si une personne a été déposée d'une lettre de change par quelque événement que ce soit, le porteur justifiant de son droit de la manière indiquée à l'alinéa précédent, n'est tenu de se dessaisir de la lettre que s'il l'a acquise de mauvaise foi ou si, en l'acquérant, il a commis une faute lourde.

## Article 16.

Les personnes actionnées en vertu de la lettre de change ne peuvent pas opposer au porteur les exceptions fondées sur leurs rapports personnels avec le tireur

## Article 14.

In the absence of a stipulation to the contrary, every indorser guarantees acceptance and payment.

He may prohibit further indorsement; in this case he is not bound by his guaranty as regards parties to whom the bill is subsequently indorsed.

## Article 15.

The possessor of a bill of exchange is deemed its lawful holder if he can prove his title by an uninterrupted series of indorsements, even though the last indorsement is in blank. When an indorsement in blank is followed by another indorsement, the latter indorser shall be presumed to have acquired the bill under the blank indorsement. Indorsements which have been struck out shall be regarded as non-existing.

If a party has been dispossessed of a bill of exchange in any manner whatever, the holder proving his title in the manner indicated in the preceding paragraph shall not be bound to surrender the bill, unless he has acquired it in bad faith or in acquiring it has been guilty of gross negligence.

## Article 16.

A party sued on a bill of exchange cannot set up against the holder any defence based upon his personal relations with the drawer or with prior holders un-

ou avec les porteurs antérieurs, à moins que la transmission n'ait eu lieu à la suite d'une entente frauduleuse.

#### Article 17.

Lorsque l'endossement contient la mention "valeur en recouvrement," "pour encaissement," "par procuration" ou toute autre mention impliquant un simple mandat, le porteur peut exercer tous les droits dérivant de la lettre de change, mais il ne peut endosser celle-ci qu'à titre de procuration.

Les obligés ne peuvent, dans ce cas, invoquer contre le porteur que les exceptions qui seraient opposables à l'endosseur.

#### Article 18.

Lorsqu'un endossement contient la mention "valeur en garantie," "valeur en gage" ou toute autre mention impliquant un nantissement, le porteur peut exercer tous les droits dérivant de la lettre de change, mais un endossement fait par lui ne vaut que comme endossement à titre de procuration.

Les obligés ne peuvent invoquer contre le porteur les exceptions fondées sur leurs rapports personnels avec l'endosseur, à moins que l'endossement n'ait eu lieu à la suite d'une entente frauduleuse.

#### Article 19.

L'endossement postérieur à l'échéance produit les mêmes effets qu'un endossement antérieur.

less the transfer took place pursuant to a fraudulent understanding.

#### Article 17.

When an indorsement contains the words "value for collection," "for payment," "by procuration," or any other words implying mere agency, the holder may exercise all the rights arising from the bill of exchange, but can indorse it only as agent.

The parties liable in such a case can set up against the holder only the defences which could be set up against the indorser.

#### Article 18.

When an indorsement contains the words "value as security," "value as pledge," or any other words implying a pledge, the holder may exercise all the rights arising from the bill of exchange, but an indorsement made by him shall operate only as an indorsement in the capacity of agent.

The parties liable cannot set up against the holder defences based upon their personal relations with the indorser, unless the indorsement was made pursuant to a fraudulent understanding.

#### Article 19.

An indorsement subsequent to maturity shall produce the same effect as an indorsement before

Toutefois, l'endossement postérieur au protêt faute de paiement ou fait après l'expiration du délai fixé pour le dresser, ne produit que les effets d'une cession ordinaire.

maturity. An indorsement after protest for non-payment or after expiration of the time fixed for drawing it shall have, however, only the effect of an ordinary assignment.

### Chapitre III.

#### *De l'acceptation.*

##### Article 20.

La lettre de change peut être, jusqu'à l'échéance, présentée à l'acceptation du tiré, au lieu de son domicile, par le porteur ou même par un simple détenteur.

A bill of exchange may, until maturity, be presented for acceptance to the drawee, at the place of his domicile by the holder or by a mere custodian of such bill.

##### Article 21.

Dans toute lettre de change, le tireur peut stipuler qu'elle devra être présentée à l'acceptation, avec ou sans fixation de délai.

Il peut interdire dans la lettre la présentation à l'acceptation, à moins qu'il ne s'agisse d'une lettre de change domiciliée ou tirée à un certain délai de vue.

Il peut aussi stipuler que la présentation à l'acceptation ne pourra avoir lieu avant une certaine date.

Tout endosseur peut stipuler que la lettre devra être présentée à l'acceptation, avec ou sans fixation de délai, à moins qu'elle n'ait été déclarée non acceptable par le tireur.

##### Article 22.

Les lettres de change à un certain délai de vue doivent être

### *Chapter III.*

#### *Acceptance.*

##### Article 20.

A bill of exchange may, until maturity, be presented for acceptance to the drawee, at the place of his domicile by the holder or by a mere custodian of such bill.

##### Article 21.

The drawer may stipulate in any bill of exchange that it must be presented for acceptance, with or without fixing a time limit.

He may forbid presentment for acceptance in the bill of exchange, except in the case of a domiciled bill of exchange or a bill drawn payable at a certain time after sight.

He may also stipulate that presentment for acceptance shall not take place before a certain date.

Any indorser may stipulate that a bill must be presented for acceptance, with or without fixing a time limit, unless it has been declared by the drawer not subject to acceptance.

##### Article 22.

Bills of exchange payable a certain time after sight must be pre-



présentées à l'acceptation dans les six mois de leur date.

Le tireur peut abréger ce dernier délai ou en stipuler un plus long.

Ces délais peuvent être abrégés par les endosseurs.

#### Article 23.

Le porteur n'est pas obligé de se dessaisir, entre les mains du tiré, de la lettre présentée à l'acceptation.

Le tiré peut demander qu'une seconde présentation lui soit faite le lendemain de la première. Les intéressés ne sont admis à prétendre qu'il n'a pas été fait droit à cette demande que si celle-ci est mentionnée dans le protêt.

#### Article 24.

L'acceptation est écrite sur la lettre de change. Elle est exprimée par le mot "accepté" ou tout autre mot équivalent; elle est signée du tiré. La simple signature du tiré apposée au recto de la lettre vaut acceptation.

Quand la lettre est payable à un certain délai de vue ou lorsqu'elle doit être présentée à l'acceptation dans un délai déterminé en vertu d'une stipulation spéciale, l'acceptation doit être datée du jour où elle a été donnée, à moins que le porteur n'exige qu'elle soit datée du jour de la présentation. A défaut de date, le porteur, pour conserver ses droits de recours contre les endosseurs et contre le tireur, fait

senté for acceptance within six months from their date. The drawer may shorten such period or stipulate for a longer one.

Such periods may be shortened by the indorsers.

#### Article 23.

The holder is not bound to leave with the drawee a bill presented for acceptance.

The drawee may require that a second presentment be made to him on the day following the first. The interested parties shall not be allowed to set up that such request has not been granted unless such fact is mentioned in the protest.

#### Article 24.

The acceptance shall be in writing on the bill of exchange. It shall be expressed by the word "accepted," or any other equivalent word. It shall be signed by the drawee. The mere signature of the drawee on the face of the bill shall constitute acceptance.

When the bill is payable at a certain time after sight, or when it must be presented for acceptance within a fixed time by virtue of a special stipulation, acceptance must be dated as of the day when it was given, unless the holder request that it be dated as of the day of presentment. In the absence of a date, the holder, in order to preserve his right of recourse against the indorsers

constater cette omission par un protêt dressé en temps utile.

and against the drawer, must set forth this omission by a protest drawn within the prescribed time.

#### Article 25.

L'acceptation est pure et simple; mais elle peut être restreinte à une partie de la somme.

Toute autre modification apportée par l'acceptation aux énonciations de la lettre de change équivaut à un refus d'acceptation. Toutefois, l'accepteur est tenu dans les termes de son acceptation.

#### Article 25.

The acceptance must be unconditional; but it may be restricted to a part of the sum.

Any other modification in the terms of the bill of exchange by the acceptance shall be equivalent to a refusal to accept. The acceptor is bound, however, according to the tenor of his acceptance.

#### Article 26.

Quand le tireur a indiqué dans la lettre de change un lieu de paiement autre que celui du domicile du tiré, sans désigner le domiciliaire, l'acceptation indique la personne qui doit effectuer le paiement. A défaut de cette indication, l'accepteur est réputé s'être obligé à payer lui-même au lieu du paiement.

Si la lettre est payable au domicile du tiré, celui-ci peut, dans l'acceptation indiquer une adresse du même lieu où le paiement doit être effectué.

#### Article 26.

When the drawer has indicated in the bill of exchange a place of payment other than that of the domicile of the drawee, without designating the person who is to pay, the acceptance must indicate the person who is to make the payment. In the absence of such an indication, the acceptor is himself deemed bound to pay at the place of payment.

If the bill is payable at the domicile of the drawee, the latter may indicate in the acceptance a different address in the same place where payment is to be made.

#### Article 27.

Par l'acceptation, le tiré s'oblige à payer la lettre de change à l'échéance.

A défaut de paiement, le porteur, même s'il est le tireur, a contre l'accepteur une action directe résultant de la lettre de change pour tout ce qui peut

#### Article 27.

By acceptance the drawee becomes liable to pay the bill of exchange at maturity.

In case of non-payment the holder, even if he is the drawer, shall have a direct action against the acceptor arising out of the bill of exchange for all that may be

être exigé en vertu des articles 47 et 48.

demanded by virtue of articles 47 and 48.

#### Article 28.

Si le tiré, qui a revêtu la lettre de change de son acceptation, a biffé celle-ci avant de s'être dessaisi du titre, l'acceptation est censée refusée; toutefois, le tiré est tenu dans les termes de son acceptation, s'il l'a biffée après avoir fait connaître par écrit au porteur ou à un signataire quelconque qu'il avait accepté.

#### Article 28.

If the drawee who has placed his acceptance on a bill of exchange has struck it out before giving up the instrument, acceptance is deemed refused. The drawee is bound, however, according to the tenor of his acceptance, if he has canceled it after having informed the holder or any other signer in writing that he had accepted.

### Chapitre IV.

#### *De l'aval.*

#### Article 29.

Le paiement d'une lettre de change peut être garanti par un aval.

Cette garantie est fournie par un tiers, ou même par un signataire de la lettre.

### Chapter IV.

#### Guaranty of Bills of Exchange (*aval*).

#### Article 29.

Payment of a bill of exchange may be guaranteed by an *aval*.

Such guaranty may be furnished by a third party or even by a signer of the bill.

#### Article 30.

L'aval est donné sur la lettre de change ou sur une allonge.

Il est exprimé par les mots "bon pour aval" ou par toute autre formule équivalente; il est signé par le donneur d'aval.

Il est considéré comme résultant de la seule signature du donneur d'aval, apposée au recto de la lettre de change, sauf quand il s'agit de la signature du tiré ou de celle d'un tireur.

L'aval doit indiquer pour le compte de qui il est donné. A

#### Article 30.

A guaranty may be placed on the bill of exchange or on an *allonge*.

It shall be expressed by the words "good for guaranty," or by any other equivalent formula. It shall be signed by the giver of the guaranty.

It shall be deemed to arise from the mere signature of the guarantor placed upon the face of the bill of exchange, except in the case of the signature of the drawee or that of the drawer.



défaut de-cette indication, il est réputé donné pour le tireur.

A guaranty must indicate on whose behalf it is given. In default of such indication it shall be deemed given for the drawer.

#### Article 31.

Le donneur d'aval est tenu de la même manière que celui dont il s'est porté garant.

Son engagement est valable, alors même que l'obligation qu'il a garantie serait nulle pour toute cause autre qu'un vice de forme.

Il a, quand il paie la lettre de change, le droit de recourir contre le garanti et contre les garants de celui-ci.

#### Article 31.

The guarantor shall be liable in the same manner as the party for whom he has become guarantor.

His agreement shall be valid even when the obligation which he has guaranteed shall be void for any cause other than a defect of form.

When he pays the bill of exchange he shall have the right of recourse against the party for whom he became guarantor and against the parties liable to the latter.

### Chapitre V.

#### *De l'échéance.*

#### Article 32.

Une lettre de change peut être tirée à jour fixe; à un certain délai de date; à vue; à un certain délai de vue.

Les lettres de change, soit à d'autres échéances, soit à échéances successives, sont nulles.

### *Chapter V.*

#### *Maturity.*

#### Article 32.

A bill of exchange may be drawn payable on a fixed date; at a certain time after date; at sight; at a certain time after sight.

Bills of exchange whose times of payment are fixed in any other way, or which are payable in installments, are void.

#### Article 33.

La lettre de change à vue est payable à sa présentation. Elle doit être présentée au paiement dans les délais légaux ou conventionnels fixés pour la présentation

#### Article 33.

A bill of exchange payable at sight shall be payable on presentment. It must be presented for payment within the time fixed by law or by agreement for the pre-

à l'acceptation des lettres payables à un certain délai de vue.

sentment for acceptance of bills payable at a certain time after sight.

#### Article 34.

L'échéance d'une lettre de change à un certain délai de vue est déterminée, soit par la date de l'acceptation, soit par celle du protêt.

En l'absence de protêt, l'acceptation non datée est réputée, à l'égard de l'accepteur, avoir été donnée le dernier jour du délai de présentation, légal ou conventionnel.

#### Article 34.

The maturity of a bill of exchange payable at a certain time after sight is determined either by the date of acceptance or by that of the protest.

In the absence of a protest an acceptance which is not dated shall be deemed, as regards the acceptor, to have been given on the last day allowed for presentment by law or agreement.

#### Article 35.

L'échéance d'une lettre de change tirée à un ou plusieurs mois de date ou de vue a lieu à la date correspondante du mois où le paiement doit être effectué. A défaut de date correspondante, l'échéance a lieu le dernier jour de ce mois.

Quand une lettre de change est tirée à un ou à plusieurs mois et demi de date ou de vue, on compte d'abord les mois entiers.

Si l'échéance est fixée au commencement, au milieu (mi-Janvier, mi-Février, etc.) ou à la fin du mois, on entend par ces termes le premier, le quinze ou le dernier jour du mois.

Les expressions "huit jours" ou "quinze jours" s'entendent, non d'une ou deux semaines, mais d'un délai de huit ou de quinze jours effectifs.

#### Article 35.

The maturity of a bill of exchange drawn at one or more months after date or after sight shall occur on the corresponding date of the month in which payment is to be made. In the absence of a corresponding date, maturity shall occur on the last day of such month.

When a bill of exchange is drawn at one or several months and a half after date or after sight, the entire months shall be counted first.

If the maturity is fixed at the beginning, the middle ("middle of January, middle of February, etc."), or at the end of a month, the first, the fifteenth, or the last day of the month are to be understood.

The expression "eight days" or "fifteen days" shall be under-

L'expression "demi-mois" indique un délai de quinze jours.

stood not as one or two weeks but a period of eight or fifteen actual days.

The expression "half month" signifies a period of fifteen days.

#### Article 36.

Quand une lettre de change est payable à jour fixe dans un lieu où le calendrier est différent de celui du lieu de l'émission, la date de l'échéance est considérée comme fixée d'après le calendrier du lieu de paiement.

Quand une lettre de change tirée entre deux places ayant des calendriers différents est payable à un certain délai de date, le jour de l'émission est ramené au jour correspondant du calendrier du lieu de paiement et l'échéance est fixée en conséquence.

Les délais de présentation des lettres de change sont calculés conformément aux règles de l'alinéa précédent.

Ces règles ne sont pas applicables si une clause de la lettre de change, ou même les simples énonciations du titre, indiquent que l'intention a été d'adopter des règles différentes.

#### Article 36.

When a bill of exchange is payable on a fixed date in a place where the calendar differs from that of the place of issue, the date of maturity shall be deemed to be fixed according to the calendar of the place of payment.

When a bill of exchange drawn between two places having different calendars is payable at a certain time after date, the date of issue shall be referred to the corresponding day of the calendar of the place of payment, and the maturity fixed accordingly.

The time for presentment of bills of exchange is calculated in accordance with the rules of the preceding paragraph.

These rules are not applicable if a stipulation in the bill of exchange or even the mere terms of the instrument indicate an intention to adopt different rules.

### Chapitre VI.

#### *Du paiement.*

#### Article 37.

Le porteur doit présenter la lettre de change au paiement, soit le jour où elle est payable, soit l'un des deux jours ouvrables qui suivent.

### Chapter VI.

#### *Payment.*

#### Article 37.

The holder must present the bill of exchange for payment either on the day when it is payable or on one of the two succeeding business days.



La présentation à une chambre de compensation équivaut à une présentation au paiement.

Article 38.

Le tiré peut exiger, en payant la lettre de change, qu'elle lui soit remise acquittée par le porteur.

Le porteur ne peut refuser un paiement partiel.

En cas de paiement partiel, le tiré peut exiger que mention de ce paiement soit faite sur la lettre et que quittance lui en soit donnée.

Article 39.

Le porteur d'une lettre de change ne peut être contraint d'en recevoir le paiement avant l'échéance.

Le tiré qui paie avant l'échéance le fait à ses risques et périls.

Celui qui paie à l'échéance est valablement libéré, à moins qu'il n'y ait de sa part une fraude ou une faute lourde. Il est obligé de vérifier la régularité de la suite des endossements, mais non la signature des endosseurs.

Article 40.

Lorsqu'une lettre de change est stipulée payable en une monnaie n'ayant pas cours au lieu du paiement, le montant peut en être payé, d'après sa valeur au jour où le paiement est exigible, dans la monnaie du pays, à moins que le tireur n'ait stipulé que la paiement devra être fait dans la monnaie indiquée (*clause de paie-*

Presentment at a clearing house is equivalent to presentment for payment.

Article 38.

The drawee may request, on paying the bill of exchange, that it shall be surrendered to him receipted by the holder.

The holder cannot refuse partial payment.

In case of partial payment the drawee may require that such payment be indicated on the bill and that a receipt therefor be given to him.

Article 39.

The holder of a bill of exchange cannot be compelled to receive payment thereof before maturity.

The drawee who pays before maturity does so at his own risk and peril.

A party paying at maturity shall be validly discharged unless he has been guilty of fraud or gross negligence. He is bound to verify the regularity of the series of indorsements but not the signatures of the indorsers.

Article 40.

When a bill of exchange is made payable in a money which is not current at the place of payment, the amount may be paid according to its value on the day when payment may be demanded, in the money of the country, unless the drawer has stipulated that it shall be paid in the money indicated (stipulation for actual

*ment effectif en une monnaie étrangère*). Les usages du lieu du paiement servent à déterminer la valeur de la monnaie étrangère. Toutefois, le tireur peut stipuler que la somme à payer sera calculée d'après un cours déterminé dans la lettre ou à déterminer par un endosseur; dans ce cas, cette somme doit être payée dans la monnaie du pays.

Si le montant de la lettre de change est indiqué dans une monnaie ayant le même dénomination, mais une valeur différente, dans le pays d'émission et dans celui du paiement, on est présumé s'être référé à la monnaie du lieu du paiement.

#### Article 41.

A défaut de présentation de la lettre de change au paiement dans le délai fixé par l'article 37, tout débiteur a la faculté d'en remettre le montant en dépôt à l'autorité compétente, aux frais, risques et périls du porteur.

#### Chapitre VII.

*Des recours faute d'acceptation et faute de paiement.*

#### Article 42.

Le porteur peut exercer ses recours contre les endosseurs, le tireur et les autres obligés:

À l'échéance, si le paiement n'a pas eu lieu.

Même avant l'échéance, (1°) s'il y a eu refus d'acceptation;

payment in foreign money). The usages of the place of payment shall determine the value of foreign money. The drawer may stipulate, however, that the sum to be paid shall be calculated according to a rate fixed in the bill or to be fixed by an indorser; in such case the sum must be paid in the money of the country.

If the amount of the bill of exchange is indicated in a kind of money having the same designation but a different value in the country of issue and in that of payment, the money of the place of payment is presumed to be understood.

#### Article 41.

In default of presentment of a bill of exchange for payment within the time fixed by article 37, any debtor shall have the privilege of placing the amount on deposit with the proper authorities at the risk and peril of the holder.

#### Chapter VII.

*Recourse for Non-acceptance and Non-payment.*

#### Article 42.

The holder may exercise recourse against the indorsers, the drawer, and the other parties liable:

At maturity, if payment has not been made;

Even before maturity (1) if

(2°) dans les cas de faillite du tiré, accepteur ou non, de cessation de ses paiements même non constatée par un jugement, ou de saisie de ses biens demeurée infructueuse; (3°) dans les cas de faillite du tireur d'une lettre non-acceptable.

#### Article 43.

Le refus d'acceptation ou de paiement doit être constaté par un acte authentique (*protêt faute d'acceptation ou faute de paiement*).

Le protêt faute de paiement doit être fait, soit le jour où la lettre de change est payable, soit l'un des deux jours ouvrables qui suivent.

Le protêt faute d'acceptation doit être fait dans les délais fixés pour la présentation à l'acceptation. Si, dans le cas prévu par l'article 23, alinéa 2, la première présentation a eu lieu le dernier jour du délai, le protêt peut encore être dressé le lendemain.

Le protêt faute d'acceptation dispense de la présentation au paiement et du protêt faute de paiement.

Dans les cas prévus par l'article 42, 2°, le porteur ne peut exercer ses recours qu'après présentation de la lettre au tiré pour le paiement et après confection d'un protêt.

Dans les cas prévus par l'article 42, 3°, la production du juge-

there has been refusal of acceptance; (2) in case of the bankruptcy of the drawee, whether an acceptor or not, of suspension of payments, even when not established by judgment, or in case of ineffective execution against his goods; (3) in case of the bankruptcy of the drawer of a bill not subject to acceptance.

#### Article 43.

Refusal to accept or to pay shall be established by a formal document (*protest for non-acceptance or for non-payment*).

Protest for non-payment must be made either on the day on which the bill of exchange is payable or on one of the two succeeding business days.

Protest for non-acceptance must be made within the time fixed for presentment for acceptance. If, in the case provided by article 23, paragraph 2, the first presentment has taken place on the last day of the time mentioned, the protest may be drawn up on the following day.

Protest for non-acceptance dispenses with presentment for payment and with protest for non-payment.

In the cases provided for in article 42, subdivision 2, the holder can exercise his rights of recourse only after presentment of the bill to the drawee for payment and after the protest has been drawn up.

In the cases provided for in



ment déclaratif de la faillite du tireur suffit pour permettre au porteur d'exercer ses recours.

article 42, subdivision 3, the production of the judgment declaratory of the bankruptcy of the drawer is sufficient to enable the holder to exercise his rights of recourse.

#### Article 44.

Le porteur doit donner avis du défaut d'acceptation ou de paiement à son endosseur et au tireur, dans les quatre jours ouvrables qui suivent le jour du protêt ou celui de la présentation en cas de clause de retour sans frais.

Chaque endosseur doit, dans le délai de deux jours, faire connaître à son endosseur l'avis qu'il a reçu, en indiquant les noms et les adresses de ceux qui ont donné les avis précédents, et ainsi de suite, en remontant jusqu'au tireur. Le délai ci-dessus indiqué court de la réception de l'avis précédent.

Dans le cas où un endosseur n'a pas indiqué son adresse ou l'a indiquée d'une façon illisible, il suffit que l'avis soit donné à l'endosseur qui le précède.

Celui qui a un avis à donner peut le faire sous une forme quelconque, même par un simple renvoi de la lettre de change. Il doit prouver qu'il l'a fait dans le délai prescrit.

Ce délai sera considéré comme observé, si une lettre missive contenant l'avis a été mise à la poste dans ledit délai.

Celui qui ne donne pas l'avis dans le délai ci-dessus indiqué,

#### Article 44.

The holder must give notice of non-acceptance or non-payment to his indorser and to the drawer within the four business days which follow the day of protest or, in case of a stipulation "return without costs," the day of presentment.

Each indorser must within two days notify his indorser of the notice which he has received, indicating the names and addresses of those who have given the preceding notices, and thus in succession back to the drawer. The time limit above indicated shall run from the receipt of the preceding notice.

In case an indorser has not indicated his address, or has indicated it in an illegible manner, it suffices if notice is given to the preceding indorser.

A party who has to give notice may do so in any form whatever, even by the simple return of the bill of exchange. He must prove that he has done so in the prescribed time.

This time limit shall be deemed to have been observed if a letter containing the notice has been mailed within the said time.

A party not giving notice

n'encourt pas de déchéance; il est responsable, s'il y a lieu, du préjudice causé par sa négligence, sans que les dommages-intérêts puissent dépasser le montant de la lettre de change.

#### Article 45.

Le tireur ou un endosseur peut, par la clause de "retour sans frais," "sans protêt," ou toute autre clause équivalente, dispenser le porteur de faire dresser, pour exercer ses recours, un protêt faute d'acceptation ou faute de paiement.

Cette clause ne dispense le porteur ni de la présentation de la lettre de change dans les délais prescrits ni des avis à donner à un endosseur précédent et au tireur. La preuve de l'inobservation des délais incombe à celui qui s'en prévaut contre le porteur.

La clause émanant du tireur produit ses effets à l'égard de tous les signataires. Si, malgré cette clause, le porteur fait dresser le protêt, les frais en restent à sa charge. Quand la clause émane d'un endosseur, les frais du protêt, s'il en est dressé un, peuvent être recouvrés contre tous les signataires.

#### Article 46.

Tous ceux qui ont tiré, accepté, endossé ou avalisé une lettre de

within the time above indicated shall not lose his right of recourse; he shall be responsible for the loss, if any, caused by his negligence, but the damages shall not exceed the amount of the bill of exchange.

#### Article 45.

The drawer or an indorser may by the stipulation "return without costs," or "without protest," or any other equivalent phrase, relieve the holder of the necessity of having a protest drawn for non-acceptance or non-payment, in order to exercise his rights of recourse.

This stipulation shall not relieve the holder of the necessity of presentment of the bill of exchange within the prescribed time nor from giving notice to a preceding indorser or to the drawer. The burden of proof of the failure to observe the time limit shall be upon the party who sets it up against the holder.

When the stipulation is made by the drawer it shall be effective as regards all the signers. If in spite of such a stipulation the holder causes a protest to be drawn, its cost shall be paid by him. When the stipulation is made by an indorser the cost of protest, if one has been drawn up, may be recovered against all the signers.

#### Article 46.

All parties who have drawn, accepted, indorsed, or guaranteed

change sont tenus à la garantie solidaire envers le porteur.

Le porteur a le droit d'agir contre toutes ces personnes, individuellement ou collectivement, sans être astreint à observer l'ordre dans lequel elles se sont obligées.

Le même droit appartient à tout signataire d'une lettre de change qui a remboursé celle-ci.

L'action intentée contre un des obligés n'empêche pas d'agir contre les autres, même postérieurs à celui qui a été d'abord poursuivi.

#### Article 47.

Le porteur peut réclamer à celui contre lequel il exerce son recours :

1°. le montant de la lettre de change non acceptée ou non payée avec les intérêts, s'il en a été stipulé;

2°. les intérêts au taux de cinq pour cent à partir de l'échéance;

3°. les frais du protêt, ceux des avis donnés par le porteur à l'endosseur précédent et au tireur, ainsi que les autres frais;

4°. un droit de commission qui, à défaut de convention, sera d'un sixième pour cent du principal de la lettre de change, et ne pourra en aucun cas dépasser ce taux.

Si le recours est exercé avant l'échéance, déduction sera faite d'un escompte sur le montant de la lettre. Cet escompte sera calculé, au choix du porteur, d'après le taux de l'escompte officiel (taux

a bill of exchange are jointly and severally liable to the holder.

The holder has the right to proceed against all of these parties, individually or collectively, without being compelled to observe the order in which they are liable.

The same rights belong to any signer who has taken up a bill of exchange.

An action instituted against one of the parties liable does not prevent action against the others, even those subsequent to the one first proceeded against.

#### Article 47.

The holder may claim from the party against whom he exercises recourse :

1. The amount of the bill of exchange, not accepted or not paid, with the interest, if any has been stipulated for;

2. Interest at the rate of 5 per cent from the date of maturity;

3. The costs of the protest, those of the notices given by the holder to the preceding indorser and to the drawer, as well as other expenses;

4. A commission which, in the absence of agreement, shall be one-sixth of 1 per cent of the principal of the bill of exchange, and shall not in any case exceed this rate.

If recourse is had before maturity the amount of the bill shall be subject to a deduction for discount. This discount shall be calculated, at the option of the



de la Banque) ou d'après le taux du marché, tel qu'il existe à la date du recours au lieu du domicile du porteur.

#### Article 48.

Celui qui a remboursé la lettre de change peut réclamer à ses garants:—

1°. la somme intégrale qu'il a payée;

2°. les intérêts de ladite somme, calculés au taux de cinq pour cent, à partir du jour où il l'a déboursée;

3°. les frais qu'il a faits;

4°. un droit de commission sur le principal de la lettre de change, fixé conformément à l'article 47, 4°.

#### Article 49.

Tout obligé contre lequel un recours est exercé ou qui est exposé à un recours, peut exiger, contre remboursement, la remise de la lettre de change avec le protêt et un compte acquitté.

Tout endosseur qui a remboursé la lettre de change peut biffer son endossement et ceux des endosseurs subséquents.

#### Article 50.

En cas d'exercice d'un recours après une acceptation partielle, celui qui rembourse la somme pour laquelle la lettre n'a pas été acceptée, peut exiger que ce remboursement soit mentionné sur la lettre et qu'il lui en soit

holder, either according to the official rate of discount (bank rate), or according to the market rate on the date of the recourse at the place of the holder's domicile.

#### Article 48.

A party who has taken up a bill of exchange may claim from the parties liable to him:

1. The entire sum which he has paid;

2. Interest on said sum calculated at the rate of 5 per cent from the day of such payment;

3. The expenses which he has incurred;

4. A commission on the principal of the bill of exchange, fixed in conformity with article 47, subdivision 4.

#### Article 49.

Any party liable against whom recourse has been had, or who is subject to recourse, may demand upon payment the surrender of the bill of exchange with the protest and a receipted account.

Any indorser who has taken up a bill of exchange may strike out his own indorsement and those of subsequent indorsers.

#### Article 50.

If recourse is had in consequence of a partial acceptance, the party who pays the sum for which the bill has not been accepted may require that this payment be stated on the bill and that a receipt be given therefor.

donné quittance. Le porteur doit, en outre, lui remettre une copie certifiée conforme de la lettre et le protêt pour permettre l'exercice des recours ultérieurs.

#### Article 51.

Toute personne ayant le droit d'exercer un recours peut, sauf stipulation contraire, se rembourser au moyen d'une nouvelle lettre (*retraite*) non domiciliée et tirée à vue sur l'un de ses garants.

La retraite comprend, outre les sommes indiquées dans les articles 47 et 48, un droit de courtage et le droit de timbre de la retraite.

Si la retraite est tirée par le porteur, le montant en est fixé d'après le cours d'une lettre de change à vue, tirée du lieu où la lettre primitive était payable sur le lieu du domicile du garant. Si la retraite est tirée par un endosseur, le montant en est fixé d'après le cours d'une lettre à vue tirée du lieu où le tireur de la retraite a son domicile sur le lieu du domicile du garant.

#### Article 52.

Après l'expiration des délais fixés—pour la présentation d'une lettre de change à vue ou à un certain délai de vue, pour la confection du protêt faute d'acceptation ou faute de paiement, pour la présentation au paiement en

The holder shall also furnish to such party a certified copy of the bill and the protest in order to permit the exercise of subsequent recourse.

#### Article 51.

Any party having the right of recourse may, in the absence of a stipulation to the contrary, recover the amount by means of a new bill (*re-draft*), undomiciled and drawn at sight on one of the parties liable to him.

The re-draft shall include, in addition to the sums indicated in articles 47 and 48, the brokerage paid and the stamp tax upon the re-draft.

If the re-draft is drawn by the holder, the amount shall be fixed according to the prevailing rate for bills of exchange at sight, drawn in the place where the original bill was payable on the place of domicile of the party liable. If the re-draft is drawn by an indorser, the amount shall be fixed according to the prevailing rate for bills of exchange at sight drawn in the place where the drawer of the re-draft is domiciled on the place of domicile of the party liable.

#### Article 52.

After the expiration of the time limits fixed—for the presentment of a bill of exchange at sight or drawn at a certain time after sight, for the drawing up of a protest for non-acceptance or non-payment, for presentment for

cas de clause de retour sans frais, le porteur est déchu de ses droits contre les endosseurs, contre le tireur et contre les autres obligés, à l'exception de l'accepteur.

A défaut de présentation à l'acceptation dans le délai stipulé par le tireur, le porteur est déchu de ses droits de recours, tant pour défaut de paiement que pour défaut d'acceptation, à moins qu'il ne résulte des termes de la stipulation que le tireur n'a entendu s'exonérer que de la garantie de l'acceptation.

Si la stipulation d'un délai pour la présentation est contenue dans un endossement, l'endosseur seul peut s'en prévaloir.

#### Article 53.

Quand la présentation de la lettre de change ou la confection du protêt dans les délais prescrits est empêchée par un obstacle insurmontable (*cas de force majeure*), ces délais sont prolongés.

Le porteur est tenu de donner, sans retard, avis du cas de force majeure à son endosseur et de mentionner cet avis, daté et signé de lui, sur la lettre de change ou sur une allonge; pour le surplus, les dispositions de l'article 44 sont applicables.

Après la cessation de la force majeure, le porteur doit, sans retard, présenter la lettre à l'acceptation ou au paiement et, s'il y a lieu, faire dresser le protêt.

payment in the case of a stipulation, "return without costs,"—the holder shall lose his right of recourse against the indorsers, the drawer, and the other parties liable except the acceptor.

In default of presentment for acceptance within the time stipulated by the drawer the holder loses his rights of recourse for non-payment as well as for non-acceptance, unless it results from the terms of the stipulation that the drawer intended to relieve himself only from the guaranty of acceptance.

If the stipulation for a time limit for presentment is contained in an indorsement, the indorser alone shall be able to avail himself of it.

#### Article 53.

When the presentment of a bill of exchange or the drawing of a protest within the time limits prescribed is prevented by an insurmountable obstacle (*vis major*), the above time limits shall be extended.

The holder is bound to give notice without delay of the existence of *vis major* to his indorser and to set forth this notice, dated and signed by him, on the bill of exchange or an *allonge*; in other respects the provisions of article 44 shall apply.

After the cessation of *vis major* the holder must without delay present the bill for acceptance or for payment and if necessary cause a protest to be drawn.



Si la force majeure persiste au delà de trente jours à partir de l'échéance, les recours peuvent être exercés, sans que ni la présentation ni la confection d'un protêt ne soit nécessaire.

Pour les lettres de change à vue ou à un certain délai de vue, le délai de trente jours court de la date à laquelle le porteur a, même avant l'expiration des délais de présentation, donné avis de la force majeure à son endosseur.

Ne sont point considérés comme constituant des cas de force majeure les faits purement personnels au porteur ou à celui qu'il a chargé de la présentation de la lettre ou de la confection du protêt.

### Chapitre VIII.

#### *De l'intervention.*

#### Article 54.

Le tireur ou un endosseur peut indiquer une personne pour accepter ou payer au besoin.

La lettre de change peut être, sous les conditions déterminées ci-après, acceptée ou payée par une personne intervenant pour un signataire quelconque.

L'intervenant peut être un tiers, même le tiré, ou une personne déjà obligée en vertu de la lettre de change, sauf l'accepteur.

L'intervenant est tenu de donner, sans retard, avis de son intervention à celui pour qui il est intervenu.

If the *vis major* continues for more than thirty days from maturity, the rights of recourse may be exercised without the necessity of either presentment or the drawing of a protest.

For bills of exchange payable at sight or a certain time after sight, the period of thirty days shall run from the date on which the holder has, even before the expiration of the time for presentment, given notice of *vis major* to his indorser.

Matters purely personal to the holder, or to the person whom he has charged with the presentment of the bill or with the drawing of the protest, shall not be deemed to constitute *vis major*.

### *Chapter VIII.*

#### *Intervention for Honor.*

#### Article 54.

The drawer or an indorser may indicate a person who is to accept or pay in case of need.

A bill of exchange may, under the conditions hereafter mentioned, be accepted or paid by a party intervening for the honor of any signer whatever.

The person intervening may be a third party, the drawee himself, or a person other than the acceptor already liable on the bill of exchange.

The party intervening is bound to give notice of his intervention without delay to the party for whose honor he has intervened.

## I. Acceptation par Intervention.

## Article 55.

L'acceptation par intervention peut avoir lieu dans tous les cas où des recours sont ouverts avant l'échéance au porteur d'une lettre de change acceptable.

Le porteur peut refuser l'acceptation par intervention, alors même qu'elle est offerte, par une personne désignée pour accepter ou payer au besoin.

S'il admet l'acceptation, il perd contre ses garants les recours qui lui appartiennent avant l'échéance.

## Article 56.

L'acceptation par intervention est mentionnée sur la lettre de change; elle est signée par l'intervenant. Elle indique pour le compte de qui elle a lieu; à défaut de cette indication, l'acceptation est réputée donnée pour le tireur.

## Article 57.

L'accepteur par intervention est obligé envers le porteur et envers les endosseurs postérieurs à celui pour le compte duquel il est intervenu, de la même manière que celui-ci.

Malgré l'acceptation par intervention, celui pour lequel elle a été faite et ses garants, peuvent exiger du porteur, contre remboursement de la somme indiquée à l'article 47, la remise de la lettre de change et du protêt, s'il y a lieu.

## I. Acceptance for Honor.

## Article 55.

Acceptance for honor may be made in all cases where the holder of a bill of exchange which is subject to acceptance has a right of recourse before maturity.

The holder may refuse acceptance for honor even when it is offered by a party designated to accept or pay in case of need.

If he permits acceptance he loses against the parties liable to him the rights of recourse which he may have before maturity.

## Article 56.

Acceptance for honor shall appear on the bill of exchange and shall be signed by the acceptor for honor. It shall indicate for whose honor it has been given. In the absence of such indication the acceptance shall be deemed to have been given for the honor of the drawer.

## Article 57.

The acceptor for honor shall be liable to the holder and to the indorsers subsequent to the party for whose honor he has intervened and in the same manner as the latter.

In spite of an acceptance for honor the party for whose honor it has been given and the parties liable to him may on payment of the sum indicated in article 47 require from the holder the surrender of the bill of exchange and of the protest, if a protest has been made.

## II. Paiement par Intervention.

## Article 58.

Le paiement par intervention peut avoir lieu dans tous les cas où, soit à l'échéance, soit avant l'échéance, des recours sont ouverts au porteur.

Il doit être fait au plus tard le lendemain du dernier jour admis pour la confection du protêt faute de paiement.

## Article 59.

Si la lettre a été acceptée par intervention ou si des personnes ont été indiquées pour payer au besoin, le porteur doit, au lieu du paiement, présenter la lettre à toutes ces personnes et faire dresser, s'il y a lieu, un protêt faute de paiement au plus tard le lendemain du dernier jour admis pour la confection du protêt.

A défaut de protêt dans ce délai, celui qui a désigné le besoin ou pour le compte de qui la lettre a été acceptée et les endosseurs postérieurs cessent d'être obligés.

## Article 60.

Le paiement par intervention doit comprendre toute la somme qu'aurait à acquitter celui pour lequel il a lieu, à l'exception du droit de commission prévu par l'article 47, 4°.

Le porteur qui refuse ce paiement perd ses recours contre ceux qui auraient été libérés.

## II. Payment for Honor.

## Article 58.

Payment for honor may take place in all cases where either at maturity or before maturity the holder has a right of recourse.

It must be made not later than the day following the last day allowed for the drawing of the protest for non-payment.

## Article 59.

If a bill has been accepted for honor or if parties have been indicated to pay it in case of need, the holder must, at the place of payment, present the bill to all such parties and, if need be, cause a protest for non-payment to be drawn not later than the day following the last day allowed for the drawing of the protest.

In default of protest within this time, the party who has indicated the case of need or for whose honor the bill has been accepted, and the subsequent indorsers are discharged.

## Article 60.

Payment for honor must include the entire sum which the party for whose honor it is made would have to pay, with the exception of the commission specified by article 47, subdivision 4.

The holder who refuses such payment shall lose his rights of recourse against those who would have been discharged thereby.



## Article 61.

Le paiement par intervention doit être constaté par un acquit donné sur la lettre de change avec indication de celui pour qui il est fait. A défaut de cette indication, le paiement est considéré comme fait pour le tireur.

La lettre de change et le protêt, s'il en a été dressé un, doivent être remis au payeur par intervention.

## Article 62.

Le payeur par intervention est subrogé aux droits du porteur contre celui pour lequel il a payé et contre les garants de celui-ci. Toutefois, il ne peut endosser la lettre de change à nouveau.

Les endosseurs postérieurs au signataire pour qui le paiement a eu lieu sont libérés.

En cas de concurrence pour le paiement par intervention, celui qui opère le plus de libérations est préféré. Si cette règle n'est pas observée, l'intervenant qui en a connaissance perd ses recours contre ceux qui auraient été libérés.

## Article 61.

Payment for honor must be established by a receipt given on the bill of exchange and must indicate for whose honor it is made. In the absence of such an indication the payment is deemed to have been made for the honor of the drawer.

The bill of exchange and the protest, if a protest has been drawn up, must be surrendered to the person paying for honor.

## Article 62.

The party paying for honor is subrogated to the rights of the holder against the party for whose honor he has paid and against the parties liable to the latter; but he cannot indorse the bill of exchange anew.

The indorsers subsequent to the party for whose honor payment has been made shall be discharged.

Where two or more persons offer to pay a bill for honor, the person whose payment will discharge most parties shall have the preference. If this rule is not observed the payer for honor who has knowledge of such fact shall lose his rights of recourse against those who would have been discharged.

## Chapitre IX.

## Chapter IX.

*De la pluralité d'exemplaires et des copies.**Bills in a Set and Copies.*

## I. Pluralité d'exemplaires.

## I. Bills in a Set.

## Article 63.

## Article 63.

La lettre de change peut être tirée en plusieurs exemplaires identiques.

A bill of exchange may be drawn in two or more identical parts.

Ses exemplaires doivent être numérotés dans le texte même du titre; faute de quoi, chacun d'eux est considéré comme une lettre de change distincte.

These parts must be numbered in the body of the instrument; in default of this, each part will be deemed a separate bill of exchange.

Tout porteur d'une lettre n'indiquant pas qu'elle a été tirée en un exemplaire unique peut exiger à ses frais la délivrance de plusieurs exemplaires. A cet effet, il doit s'adresser à son endosseur immédiat qui est tenu de lui prêter ses soins pour agir contre son propre endosseur et ainsi de suite en remontant jusqu'au tireur. Les endosseurs sont tenus de reproduire leurs endossements sur les nouveaux exemplaires.

Any holder of a bill which does not indicate that it has been drawn in a single part may require at his own cost the delivery of two or more parts. For this purpose he must address himself to his immediate indorser who is bound to assist him in proceeding against his own indorser, and thus in succession back to the drawer. The indorsers shall be bound to reproduce their indorsements on the new parts.

## Article 64.

## Article 64.

Le paiement fait sur un des exemplaires est libératoire, alors même qu'il n'est pas stipulé que ce paiement annule l'effet des autres exemplaires. Toutefois, le tiré reste tenu à raison de chaque exemplaire accepté dont il n'a pas obtenu la restitution.

Payment made on one of the parts shall operate as a discharge, even though it is not stipulated that such payment shall annul the effect of the other parts. The drawee remains liable, however, on each part accepted of which he has not secured the return.

L'endosseur qui a transféré les exemplaires à différentes personnes ainsi que les endosseurs subséquents sont tenus à raison de tous les exemplaires portant

An indorser who has transferred the parts to different parties and all subsequent indorsers as well are liable on all parts

leur signature et qui n'ont pas été restitués.

bearing their signature which have not been returned.

#### Article 65.

Celui qui a envoyé un des exemplaires à l'acceptation doit indiquer sur les autres exemplaires le nom de la personne entre les mains de laquelle cet exemplaire se trouve. Celle-ci est tenue de le remettre au porteur légitime d'un autre exemplaire.

Si elle s'y refuse, le porteur ne peut exercer de recours qu'après avoir fait constater par un protêt,

1°. que l'exemplaire envoyé à l'acceptation ne lui a pas été remis sur sa demande,

2°. que l'acceptation ou le paiement n'a pu être obtenu sur un autre exemplaire.

#### Article 65.

A party who has sent one of the parts for acceptance must indicate on the other parts the name of the party with whom such part may be found. The latter is bound to deliver it to the lawful holder of another part.

If he refuses to do so, the holder cannot exercise recourse until after he has established by a protest:

1. That the part sent for acceptance has not been delivered to him on his demand;

2. That acceptance or payment cannot be obtained on another part.

### II. Copies.

#### Article 66.

Tout porteur d'une lettre de change a le droit d'en faire des copies.

La copie doit reproduire exactement l'original avec les endossements et toutes les autres mentions qui y figurent. Elle doit indiquer où elle s'arrête.

Elle peut être endossée et avalisée de la même manière et avec les mêmes effets que l'original.

### II. Copies.

#### Article 66.

Every holder of a bill of exchange has the right to make copies thereof.

A copy must reproduce the original exactly, including indorsements and all other declarations which appear thereon. It must indicate where it ends as a copy.

It may be indorsed and guaranteed by *aval* in the same manner and with the same effect as the original.

#### Article 67.

La copie doit désigner le détenteur du titre original. Celui-ci

#### Article 67.

A copy must designate the party possessing the original in-



est tenu de remettre ledit titre au porteur légitime de la copie.

S'il s'y refuse, le porteur ne peut exercer de recours contre les personnes qui ont endossé la copie qu'après avoir fait constater par un protêt que l'original ne lui a pas été remis sur sa demande.

## Chapitre X.

### *Du faux et des altérations.*

#### Article 68.

La falsification d'une signature, même de celle du tireur ou de l'accepteur, ne porte en rien atteinte à la validité des autres signatures.

#### Article 69.

En cas d'altération du texte d'une lettre de change, les signataires postérieurs à cette altération sont tenus dans les termes du texte altéré; les signataires antérieurs le sont dans les termes du texte originaire.

## Chapitre XI.

### *De la prescription.*

#### Article 70.

Toutes actions, résultant de la lettre de change contre l'accepteur, se prescrivent par trois ans à compter de la date de l'échéance.

Les actions du porteur contre les endosseurs et contre le tireur

instrument. The latter is bound to surrender such instrument to the lawful holder of the copy.

If he refuses to do so, the holder cannot exercise recourse against the parties who have indorsed the copy until after he has established by a protest that the original has not been surrendered to him on his demand.

## Chapter X.

### *Forgeries and Alterations.*

#### Article 68.

The forgery of a signature, even that of the drawer and of the acceptor, does not affect in any manner the validity of the other signatures.

#### Article 69.

In case of alteration of the text of a bill of exchange, parties who have signed subsequent to the alteration are bound according to the tenor of the altered text; parties who have signed prior to the alteration are bound according to the tenor of the original text.

## Chapter XI.

### *Prescription.*

#### Article 70.

All actions arising from a bill of exchange are barred after three years counted from the date of maturity.

Actions by the holder against the indorsers and against the drawer are barred after one year

se prescrivent par un an à partir de la date du protêt dressé en temps utile ou de celle de l'échéance en cas de clause de retour sans frais.

Les actions en recours des endosseurs les uns contre les autres et contre le tireur se prescrivent par six mois à partir du jour où l'endosseur a remboursé la lettre ou du jour où il a été lui-même actionné.

#### Article 71.

L'interruption de la prescription n'a d'effet que contre celui à l'égard duquel l'acte interruptif a été fait.

### Chapitre XII.

#### *Dispositions générales.*

#### Article 72.

Le paiement d'une lettre de change dont l'échéance est à un jour férié légal, ne peut être exigé que le premier jour ouvrable qui suit. De même, tous autres actes relatifs à la lettre de change, notamment la présentation à l'acceptation et le protêt, ne peuvent être faits qu'un jour ouvrable.

Lorsqu'un de ces actes doit être accompli dans un certain délai dont le dernier jour est un jour férié légal, ce délai est prorogé jusqu'au premier jour ouvrable qui en suit l'expiration. Les jours fériés intermédiaires sont compris dans la computation du délai.

from the date of the protest drawn up within the prescribed time or from the date of maturity where there is the stipulation "return without costs."

Actions of recourse by indorsers against each other and against the drawer are barred after six months from the day when the indorser took up the bill or from the day when he himself was sued.

#### Article 71.

Interruption of prescription shall operate only against the party with reference to whom the interruption has taken place.

### *Chapter XII.*

#### *General Provision.*

#### Article 72.

Payment of a bill of exchange whose maturity falls on a legal holiday cannot be demanded until the next business day. In the same way all other acts relating to a bill of exchange, especially presentment for acceptance and protest, can only be done on a business day.

When any of these acts must be done within a certain period the last day of which is a legal holiday, the period shall be extended until the first business day following the expiration of such time. Intervening holidays shall be counted in the computation of the time limit.

## Article 73.

Les délais légaux ou conventionnels ne comprennent pas le jour qui leur sert de point de départ.

Aucun jour de grâce, ni légal, ni judiciaire, n'est admis.

## Chapitre XIII.

*Des conflits de lois.*

## Article 74.

La capacité d'une personne pour s'engager par lettre de change est déterminée par sa loi nationale. Si cette loi nationale déclare compétente la loi d'un autre État, cette dernière loi est appliquée.

La personne qui serait incapable, d'après la loi indiquée par l'alinéa précédent, est, néanmoins, valablement tenue, si elle s'est obligée sur le territoire d'un État d'après la législation duquel elle aurait été capable.

## Article 75.

La forme d'un engagement pris en matière de lettre de change est réglée par les lois de l'État sur le territoire duquel cet engagement a été souscrit.

## Article 76.

La forme et les délais du protêt ainsi que la forme des autres actes nécessaires à l'exercice ou à la conservation des droits en matière de lettre de change, sont réglés par les lois de l'État sur le territoire duquel

## Article 73.

Legal or contractual time limits do not include the day from which the reckoning begins.

Days of grace, either legal or judicial, are not allowed.

*Chapter XIII.**Conflict of Laws.*

## Article 74.

The capacity of a person to bind himself by bill of exchange is determined by his national law. If such national law declares the law of another state to be applicable, the latter law shall be applied.

A person lacking capacity under the law indicated in the preceding paragraph is validly bound, nevertheless, if he entered into the obligation within the territory of a state according to whose law he would have had capacity.

## Article 75.

The form of any contract entered into with respect to bills of exchange is regulated by the laws of the state within whose territory such contract has been signed.

## Article 76.

The form and time limits of the protest, as well as the form of other acts necessary for the exercise or preservation of rights with respect to bills of exchange, are regulated by the laws of the state within whose territory the



doit être dressé le protêt ou passé l'acte en question.

protest must be drawn up, or the act in question must be done.

## TITRE SECOND.—DU BILLET À ORDRE.

### Article 77.

Le billet à ordre contient :

1°. La dénomination du titre insérée dans le texte même et exprimée dans la langue employée pour la rédaction de ce titre.

2°. La promesse pure et simple de payer une somme déterminée.

3°. L'indication de l'échéance.

4°. Celle du lieu où le paiement doit s'effectuer.

5°. Le nom de celui auquel ou à l'ordre duquel le paiement doit être fait.

6°. L'indication de la date et du lieu où le billet est souscrit.

7°. La signature de celui qui émet le titre (*souscripteur*).

### Article 78.

Le titre dans lequel une des énonciations indiquées à l'article précédent fait défaut, ne vaut pas comme billet à ordre, sauf dans les cas déterminés par les alinéas suivants.

Le billet à ordre dont l'échéance n'est pas indiquée, est considéré comme payable à vue.

A défaut d'indication spéciale, le lieu de création du titre est réputé être le lieu du paiement

## TITLE II.—PROMISSORY NOTES.

### Article 77.

A promissory note must contain :

1. The designation of the instrument, inserted in the body itself, and expressed in the language used in drawing up such instrument;

2. An unconditional promise to pay a certain sum;

3. An indication of the day of maturity;

4. An indication of the place of payment;

5. The name of the party to whom or to whose order payment must be made;

6. An indication of the date and of the place where the note is signed;

7. The signature of the party who issues the instrument (maker).

### Article 78.

An instrument in which any one of the requirements indicated in the preceding article is wanting is not valid as a promissory note, except in the cases designated in the following paragraphs.

A promissory note in which the time of payment is not indicated is deemed payable at sight.

In the absence of a special indication, the place where the in-

et, en même temps, le lieu du domicile du souscripteur.

Le billet à ordre n'indiquant pas le lieu de sa création est considéré comme souscrit dans le lieu désigné à côté du nom du souscripteur.

#### Article 79.

Sont applicables au billet à ordre, en tant qu'elles ne sont pas incompatibles avec la nature de ce titre, les dispositions relatives à la lettre de change et concernant :

- l'endossement (arts. 10-19).
- l'aval (arts. 29-31).
- l'échéance (arts. 32-36).
- le paiement (arts. 37-41).
- les recours faute de paiement (arts. 42-49, 51-53).
- le paiement par intervention (arts. 54, 58-62).
- les copies (arts. 66 et 67).
- les falsifications et altérations (arts. 68 et 69).
- la prescription (arts. 70 et 71).
- les jours fériés, la computation des délais et l'interdiction des jours de grâce (arts. 72 et 73).

les conflits de lois (arts. 74-76).

Sont aussi applicables au billet à ordre les dispositions concernant la domiciliation (arts. 4 et 26), la stipulation d'intérêts (art. 5), les différences d'énonciations relatives à la somme à payer (art. 6), les conséquences de la signature d'une personne incapable (art. 7) ou d'une per-

strument is issued is deemed the place of payment and at the same time the place of the maker's domicile.

A promissory note which does not indicate the place of its issue is deemed made in the place designated beside the name of the maker.

#### Article 79.

The following provisions relating to bills of exchange are applicable to promissory notes so far as they are not inconsistent with the nature of such instruments:

- Indorsement (articles 10-19).
- Guaranty by *aval* (articles 29-31).
- Maturity (articles 32-36).
- Payment (articles 37-41).
- Recourse for non-payment (articles 42-49, 51-53).
- Payment for honor (articles 54, 58-62).
- Copies (articles 66 and 67).
- Forgeries and alterations (articles 68 and 69).
- Prescription (articles 70 and 71).
- Legal holidays, computation of time limits, and prohibition of days of grace (articles 72 and 73).
- Conflict of laws (articles 74-76).

The following provisions shall also be applicable to promissory notes:

The domiciliation of bills (articles 4 and 26), stipulation for interest (article 5), discrepancies

sonne qui agit sans pouvoirs ou en dépassant ses pouvoirs (art. 8).

as regards the sum to be paid (article 6), consequences of signature by party without capacity (article 7), or by party acting without authority or exceeding his authority (article 8).

#### Article 80.

Le souscripteur d'un billet à ordre est obligé de la même manière que l'accepteur d'une lettre de change.

Les billets à ordre payables à un certain délai de vue doivent être présentés au visa du souscripteur dans les délais fixés à l'article 22. Le délai de vue court de la date du visa signé du souscripteur sur le billet. Le refus du souscripteur de donner son visa daté est constaté par un protêt (art. 24) dont la date sert de point de départ au délai de vue.

#### Article 80.

The maker of a promissory note shall be bound in the same manner as an acceptor of a bill of exchange.

Promissory notes payable at a certain time after sight must be presented for the *visé* of the maker within the period fixed by article 22. The time after sight shall run from the date of the *visé* signed by the maker on the note. Refusal of the maker to give his *visé* with the date thereon must be established by protest (article 24) whose date shall determine the beginning of the period after sight.



# D. COMPARATIVE TABLES OF SECTIONS OF THE NEGOTIABLE INSTRUMENTS LAW AND THE BILLS OF EXCHANGE ACT AND OF ARTICLES OF THE HAGUE CONVEN- TION AND UNIFORM LAW

TABLE I

N. I. L.	B. E. A.	H. C. & U. L.
1 (1st par.)	8 (1), 3 (2), 83 (1), 89	2-1, 78-1 <sup>10</sup>
1-1	3 (1)	1-8
1-2	3 (1)	1-2, 40-1, 79
1-3	3 (1)	1-4, 2-2, 32-1, art. 6
1-4	3 (1), 8 (2) (4), 83 (1)	10-1, art. 2
1-5	6 (1)	1-3
2-1	9 (1) (a)	5-1, 79
2-2	9 (1) (b)	32-2
2-3	9 (1) (c)	32-2
2-4	9 (1) (d)	...
2-5	...	...
3	3 (3)	...
4-1	11 (1)	32-1
4-2	...	art. 6
4-3	11 (2)	32
4 (last par.)	11 (last par.)	...
5 (1st par.)	3 (2)	...
5-1	83 (3)	...
5-2-3-4	16 (2)	...
6-1	3 (4) (a)	1-7
6-2	3 (4) (b)	...
6-3	3 (4) (c)	1-5, 1-7, 2-3-4, 79-3-4
6-4	91 (2)	...
6-5	...	40-1
6 (last par.)	...	...

<sup>10</sup> The principal number refers to the articles of the Uniform Law of the Hague Convention; the side numbers refer to their paragraphs, except in article 1 where they refer to subdivisions. The prefix "art." signifies that the reference is to the Convention and not to the Uniform Law.

N. I. L.	B. E. A.	H. C. & U. L.
7-1	10 (1) (a)	...
7-2	10 (1) (b)	2-2, 78-2
7 (last par.)	10 (2)	19
8 (1st par.)	8 (4) (5)	10-1
8-1	...	...
8-2	5 (1)	3-1
8-3	5 (1)	...
8-4-5-6	7 (2)	...
8 (last par.)	7 (1)	1-6
9-1-5	8 (3)	...
9-2-4	...	...
9-3	7 (3)	...
10	...	...
11	13 (1)	...
12	13 (2)	...
13	12, 14 (3)	24-2, 34-2
14	20	...
15	...	...
16	21 (1) (2) (3)	...
17-1	9 (2)	6-1
17-2	9 (3)	5-3
17-3	...	1-7
17-4-5	...	...
17-6	56	...
17-7	85 (2)	...
18	23	...
19	91	...
20	26	8
21	25	...
22	22 (2)	7
23	24	39-3
24	30 (1)	...
25	27 (1)	...
26	27 (2)	...
27	27 (3)	...
28	...	...
29	28	...
30	31 (1) (2) (3)	...
31	32 (1)	12-1
32	32 (2)	11-2
33	32 (6)	12-2
34	34 (1) (2) (3), 31 (2)	12-2, 13-2-3
35	34 (4)	13-1
36-1	35 (1)	14-2, 17-1
36-2-3	35 (1)	17-1
36 (last par.)	8 (5)	...
37	35 (2) (3)	17

## COMPARATIVE TABLES

301

N. I. L.	B. E. A.	H. C. & U. L.
38	16 (1)	14-1
39	33	11-1
40	...	...
41	32 (3)	...
42	...	...
43	32 (4)	...
44	31 (5)	...
45	36 (4)	...
46	...	...
47	36 (1)	...
48	...	...
49	31 (4)	...
50	37	...
51	38 (1) (3)	16
52	29 (1)	...
53	36 (3), 86 (3)	...
54	...	...
55	29 (2)	...
56	90	15-2
57	38 (2)	16
58	29 (3)	...
59	30 (2)	15-1
60	88	...
61	55 (1), 16 (1)	9
62 (1st par.)	54 (1)	27-1
62-1	54 (2) (a)	7, 68
62-2	54 (2) (b) (c)	7
63	56	...
64	...	...
65	58	68
66-1-2	55 (2) (b) (c)	68
66 (last par.)	55 (2) (a)	14-1
67	56	...
68	32 (5)	...
69	...	...
70	52 (1) (2), 45 (1st par.), 87 (1) (2)	4, 37-1, 52-1
71	45 (1) (2, 1st par.), 86 (1)	33, 37-1, art. 7
72	45 (3)	...
73	45 (4)	...
74	52 (4)	38-1
75	...	...
76	45 (7)	...
77	45 (6)	...
78	45 (6)	...
79	46 (2) (c)	...
80	46 (2) (d)	...
81	46 (1)	53



N. I. L.	B. E. A.	H. C. & U. L.
82-1	46 (2) (a)	53
82-2	46 (2) (b)	...
82-3	46 (2) (c)	...
83	47 (1)	42-1
84	47 (2)	42-1
85	14 (1), 92	37-1, art. 7, 72, 73-2
86	14 (2)	73-1
87	...	...
88	59 (1)	39
89	48	44-6
90	49 (1)	44-1-2
91	49 (2)	...
92	49 (3)	...
93	49 (4)	...
94	49 (13)	...
95	49 (7)	...
96	49 (5), 49 (15)	44-4
97	49 (8)	...
98	49 (9)	...
99	49 (11)	...
100	49 (11)	...
101	49 (10)	...
102	49 (12)	44-1-2-5
103	49 (12) (a)	...
104	49 (12) (b)	...
105	49 (15)	44-5
106	...	...
107	49 (14)	44-2
108	...	44-3
109	50 (2) (b)	...
110	...	45-3
111	...	45-1-2
112	50 (2) (a)	...
113	50 (1)	53
114	50 (2) (c)	...
115	50 (2) (d)	...
116	48 (2)	...
117	48 (1)	...
118	51 (1) (2), 89 (4)	43-1
119-1	59 (1)	39
119-2	59 (3)	...
119-3	63 (1)	...
119-4	...	...
119-5	61	...
120-1-3-4-5-6	...	...
120-2	63 (2)	...
121	59 (2) (3)	49-2
122	62	...
123	63 (3)	...

N. I. L.	B. E. A.	H. C. & U. L.
124	64 (1)	69
125	64 (2)	...
126	3 (1) (2), 8 (4)	1
127	53	art. 14
128	6 (2)	...
129	4 (1) (2)	...
130	5 (2)	3-2
131	15	54-1, 59-1
132	17 (2) (a)	24-1
133	17	24-1
134	...	...
135	...	...
136	42	23, 24-2
137	...	23
138	18	20
139	19	25
140	19 (2) (c, last par.)	25, 26-2
141-1	19 (2) (a)	25
141-2	19 (2) (b)	25-1
141-3	19 (2) (c, 1st par.)	25, 26-2
141-4	19 (2) (d)	25
141-5	19 (2) (e)	25
142	44	25
143-1, 2	39 (1) (2)	22-1
143-3	39 (4)	...
143 (last par.)	39 (3)	...
144	40 (1) (2)	22-1, 52
145	41 (1)	20
146	92	...
147	39 (4)	53
148-1	41 (2) (a)	42
148-2	41 (2) (b)	53
148-3	41 (2) (c)	...
149-1	43 (1) (a)	...
149-2	43 (1) (b)	...
150	42	52-2
151	43 (2)	42, 43-4
152	51 (2)	43-1
153	51 (7)	...
154	94	...
155	51 (4), 93	43-2-3
156	51 (6) (b)	...
157	51 (3)	43-4
158	51 (5)	42-2, 43-5-6
159	51 (9)	53
160	51 (8)	...
161	65 (1) (2)	54-3, 55
162	65 (3)	56
163	65 (4)	56

N. I. L.	B. E. A.	H. C. & U. L.
164	66 (2)	57-1
165	66 (1)	...
166	65 (5)	...
167	67 (1)	59-1
168	67 (2)	...
169	67 (3)	53
170	67 (4)	59-1
171	68 (1)	54-3, 58
172	68 (3)	61-1
173	68 (4)	...
174	68 (2)	62-3
175	68 (5)	62-1-2
176	68 (7)	60-2
177	68 (6)	61-2
178	71 (1)	63-2
179	71 (3)	...
180	71 (2)	64-2
181	71 (4)	64-1
182	71 (5)	64-1
183	71 (6)	64-1
184	83 (1) (2)	77, 78, 79
185	73	...
186	74 (1)	...
187	...	...
188	...	...
189	53 (1), 73	...
190	1	...
191	2	...
192	...	...
193	40 (3), 45 (2), 73, 74 (2), 86 (2), 89 (1)	...
194	14 (1), 92	72
195	...	...
196	97 (2)	...
197	...	...
198	...	...

TABLE II

B. E. A.	N. I. L.	H. C. & U. L.
1	190	...
2	191	...
3 (1)	126	...
3 (2)	5 (1st par.)	...
3 (3)	3	...
3 (4)	6	1-7-5, 2-3-4, 78-3-4
4 (1) (2)	129	...
5 (1)	8-2-3	3-1



## COMPARATIVE TABLES

305

B. E. A.	N. I. L.	H. C. & U. L.
5 (2)	130	3-2
6 (1)	1-5	1-3
6 (2)	128	...
7 (1)	8 (last par.)	1-6
7 (2)	8-4-5-6	...
7 (3)	9-3	...
8 (1)	...	10-2
8 (2)	1-4	10-1, art. 2
8 (3)	9-1-5	...
8 (4) (5)	8 (1st par.)	10-1
9 (1) (a)	2-1	5-1, 79
9 (1) (b) (c)	2-2-3	32-2
9 (2)	17-1	6-1
9 (3)	17-2	5-3
10 (1)	7-1-2	2-2, 78-2
10 (2)	7 (last par.)	...
11 (1)	4-1	32-1
11 (2)	4-3	32
12	13	24-2, 34-2
13 (1)	11	...
13 (2)	12	...
14 (1)	85	37-1, art. 7, 72, 73-2
14 (2)	86	73-1
14 (3)	13	34
14 (4)	...	35-1
15	131	54-1, 59-1
16 (1)	61	9-2
16 (2)	5-3	...
17	132	24-1
18	138	20
19	139	25
19 (2) (a) (d) (e)	141-1-4-5	25
19 (2) (b)	141-2	25-1
19 (2) (c, 1st par.)	141-3	25, 26-2
19 (2) (c, last par.)	140	25, 26-2
20	14	25, 26-3
21	16	28
22 (1)	...	...
22 (2)	22	7
23	18	...
24	23	39-3
25	21	...
26 (1)	20	8
26 (2)	...	...
27 (1)	25	...
27 (2)	26	...
27 (3)	27	...
28	29	...
29 (1)	52	...

B. E. A.	N. I. L.	H. C. & U. L.
29 (2)	55	...
29 (3)	58	...
30 (1)	24	...
30 (2)	59	15-1
31 (1) (2) (3)	30	...
31 (4)	49	...
31 (5)	44	...
32 (1)	31	12
32 (2)	32	11-2
32 (3)	41	...
32 (4)	43	...
32 (5)	68	...
32 (6)	33	12-2
33	39	11-1
34 (1) (2) (3)	34	12-2, 13-2-3
34 (4)	35	13-1
35 (1)	36-1	14-2, 17-1
35 (2) (3)	37	17
36 (1)	47	...
36 (2)	...	19
36 (3)	53	...
36 (4)	45	...
36 (5)	...	...
37	50	...
38	51, 57	16
39 (1) (2)	143-1-2	22-1
39 (3)	143 (last par.)	...
39 (4)	147	53
40 (1) (2)	144	22-1, 52
40 (3)	193	...
41 (1)	145	20
41 (2) (a)	148-1	53
41 (2) (b)	148-2	42
41 (2) (c)	148-3	...
42	150	52-2
43 (1)	149	...
43 (2)	151	42, 43-4
44	142	25
45 (1st par.)	70	52-1
45 (1)	71	37-1
45 (2, 1st par.)	71	33
45 (2, last par.)	193	...
45 (3)	72	...
45 (4)	73	...
45 (5)	...	...
45 (6)	78	...
45 (7)	76	...
45 (8)	...	...
46 (1)	81	53

## COMPARATIVE TABLES

307

B. E. A.	N. I. L.	H. C. & U. L.
46 (2) (a)	82-1	53
46 (2) (b)	82-2	...
46 (2) (c)	79	...
46 (2) (d)	80	...
46 (2) (e)	82-3	...
47 (1)	83	42-1
47 (2)	84	42-1
48	89	44-6
48 (1)	117	...
48 (2)	116	...
49 (1)	90	44-1-2
49 (2)	91	...
49 (3)	92	...
49 (4)	93	...
49 (5)	96	44-4
49 (6)	...	44-4
49 (7)	95	44-4
49 (8)	97	...
49 (9)	98	...
49 (10)	101	...
49 (11)	100	...
49 (12)	102, 103, 104	44-1, 2-5
49 (13)	94	...
49 (14)	107	44-2
49 (15)	96, 105	44-4-5
50 (1)	113	53
50 (2) (a)	112	...
50 (2) (b)	109	...
50 (2) (c)	114	...
50 (2) (d)	115	...
51 (1)	118	43-1
51 (2)	152	43-1
51 (3)	157	43-4
51 (4)	155	43-2-3
51 (5)	158	42-2, 43-5-6
51 (6) (a)	...	...
51 (6) (b)	156	...
51 (7)	153	...
51 (8)	160	...
51 (9)	159	53
52 (1)	70	52-1
52 (2)	...	...
52 (3)	...	...
52 (4)	74	38-1
53 (1)	127	art. 14
53 (2)	...	...
54 (1)	62 (1st par.)	27-1
54 (2) (a)	62-1	7, 68
54 (2) (b) (c)	62-2	7



B. E. A.	N. I. L.	H. C. & U. L.
55 (1)	61	9
55 (2) (a)	66 (last par.)	14-1
55 (2) (b) (c)	66-1-2	68
56	17-6, 63, 67	...
57	...	47, 48
58	65	68
59 (1)	119-1, 88	39
59 (2) (3)	121	49-2
60	...	39-3
61	119-5	...
62	122	...
63 (1)	119-3	...
63 (2)	120-2	...
63 (3)	123	...
64 (1)	124	69
64 (2)	125	...
65 (1), (2)	161	54-3, 55
65 (3)	162	56
65 (4)	163	56
65 (5)	166	...
66 (1)	165	...
66 (2)	164	57-1
67 (1)	167	59-1
67 (2)	168	...
67 (3)	169	53
67 (4)	170	59-1
68 (1)	171	54-3, 58
68 (2)	174	62-3
68 (3)	172	61-1
68 (4)	173	...
68 (5)	175	62-1, 2
68 (6)	177	61-2
68 (7)	176	60-2
69	...	66
70	...	art. 15
71 (1)	178	63-2
71 (2)	180	64-2
71 (3)	179	...
71 (4)	181	64-1
71 (5)	182	64-1
71 (6)	183	64-1
72 (1)	...	75
72 (3)	...	76
73	185	...
74 (1)	186	...
74 (2)	193	...
74 (3)	...	...
75	...	...
76	...	...

## COMPARATIVE TABLES

309

B. E. A.	N. I. L.	H. C. & U. L.
77	...	...
78	...	...
79	...	...
80	...	...
81	...	...
82	...	...
83 (1)	184	77, 78
83 (2)	184	...
83 (3)	5-1	...
83 (4)	...	...
84	...	...
85 (1)	...	...
85 (2)	17-7	...
86 (1)	71	33
86 (2)	193	...
86 (3)	53	...
87 (1)	...	...
87 (2)	70	...
87 (3)	...	...
88	60	...
89 (1) (2) (3)	...	78, 79
89 (4)	118	43-1
90	56	15-2
91 (1)	19	...
91 (2)	6-4	...
92	85, 194	72
93	155	43-2-3
94	154	...
95	...	...
96	...	...
97 (1)	...	...
97 (2)	196	...
97 (3)	...	...
98	...	art. 19-2
99	...	...
100	...	...

TABLE III

U. L.	N. I. L.	B. E. A.
1-1	...	...
2	1-2	3 (1)
3	1-5	6 (1)
4	1-3	3 (1)
5	6-3	3 (4) (e)
6	8 (last par.)	7 (1)
7	6-1, 17-3	3 (4) (a)
8	1-1	3 (1)

U. L.	N. I. L.	B. E. A.
2-1	1 (1st par.)	3 (2)
2	7-2	10 (1) (b)
3-4	6-3	3 (4) (c)
3-1	8-2	5 (1)
2	130	5 (2)
3	...	...
4	70	...
5-1	2-1	9 (1) (a)
2	...	...
3	17-2	9 (3)
6-1	17-1	9 (2)
2	...	...
7	22, 62, 66	54 (2), 22 (2), 55 (2) (b)
8	20	26
9-1	61	55 (1)
2	61	...
10-1	8 (1st par.)	8 (4) (5)
2	...	...
3	...	...
11-1	39	33
2	32	32 (2)
3	...	...
12-1	31	32 (1)
2	34	34
13-1	...	...
2	34, 35	34 (1) (4)
14-1	38, 66 (last par.)	16 (1), 55 (2) (a)
2	36 (1)	35 (1)
15-1	59	30 (2)
2	56	90
16	57	38 (2)
17	36, 37	35
18-1	...	...
2	...	...



## COMPARATIVE TABLES

311

U. L.	N. I. L.	B. E. A.
19	7 (last par.)	10 (2)
20	138, 145	18, 41 (1)
21-1	143-2	39 (2)
2	...	...
3	...	...
4	...	...
22-1	143-1, 144	39 (1), 40
2	...	...
3	...	...
23	136, 137	42
24-1	132, 134	17 (2) (a)
2	13, 136	...
25-1	141-2	19 (2) (b), 12, 42
2	142	44 (1)
26-1	...	...
2	140	19 (2) (c) (last par.)
27-1	62 (1st par.)	54 (1)
2	...	...
28	191	2
29	...	...
30	...	...
31	...	...
32-1	1-3, 4-1	3 (1), 11
2	1 (1st par.), 2-2-3	3 (2), 9 (1) (b) (c)
33	71	45 (2, 1st par.) 86 (1)
34	13	14-3
35	...	14-4
36	...	...
37-1	71, 85	45 (1) (2, 1st par.), 14 (1)
2	...	...

U. L.	N. I. L.	B. E. A.
38-1	74	52 (4)
2	...	...
3	...	...
39-1	...	...
2	88	59 (1, last par.)
3	23	24, 60
40-1	1-2, 6-5	3 (1)
2	...	...
41	...	...
42-1	84	47 (2)
2	151, 158	43-2, 51 (5)
43-1	118, 152	51 (1) (2), 89 (4)
2-3	155	51 (4), 93
4	151	43 (2)
5	...	...
6	...	...
44-1	90, 102	49 (1), 49 (12)
2	90, 102, 107	49 (1), 49 (12) (14)
3	108	...
4	96	49 (5) (6)
5	96, 105	49 (15)
6	89	48
45	109, 110, 111	50 (2) (b)
46-1	...	...
47	...	57
48	...	57
49-1	...	...
2	121	59 (2) (b)
50	...	...
51	...	57 (2)
52	70, 144, 150	45 (1st par.) 40 (1) (2), 42
53	81, 82-1, 112, 113, 147, 148-2, 159	46 (1), 46 (2) (a) 50 (2) (a), 50 (1), 39 (4), 41 (2) (b), 51 (9)
54-1	131	15

## COMPARATIVE TABLES

313

U. S.	N. I. L.	B. E. A.
2	...	...
3	161, 171	65 (1), 68 (1)
4	...	...
55	161	65 (1)
56	162, 163	65 (3) (4)
57-1	164	66 (2)
57-2	...	...
58	171	68 (1)
59-1	131, 167, 170	15, 67 (1) (4)
60	176	68 (7)
61-1	172, 173	68 (3) (4)
2	177	68 (6)
62-1-2	175	68 (5)
3	174	68 (2)
63-1	...	...
2	178	71 (1)
3	...	...
64-1	181, 182, 183	71 (4) (5) (6)
2	180	71 (2)
65	...	...
66	...	69
67	...	...
68	62 (1), 65 (1) (2), 66 (2)	54 (2) (a) (b) 55 (2) (b) (c)
69	124	64 (1)
70	...	...
71	...	...
72	85, 194	14 (1), 92
73-1	86	14 (2)
2	85	14 (1)



314 CONFLICT OF LAWS RELATING TO BILLS AND NOTES

U. L.	N. I. L.	B. E. A.
74	...	...
75	...	72 (1)
76	...	72 (3)
77	184	83 (1) (2)
78-1	1 (1st par.)	89
2	7-2	10 (1) (b)
3-4	6-3	3 (4) (c)
79	...	89
80	60	88

## TABLE OF ENGLISH AND AMERICAN CASES

Alabama Mid. Ry. Co. v. Guilford, 141  
Alcock v. Smith, 137, 138  
Allan v. Eldred, 46  
Allatini & Co. v. Abbott, 158  
Allen v. Bratton, 141  
Allen v. Merchants Bank of New York, 148, 150  
Alves v. Hodgson, 103  
Amsinck v. Rogers, 122, 148  
Andrews v. His Creditors, 65  
Armstrong v. Best, 64  
Arnold v. Potter, 76  
Arp v. Allis-Chalmers Co., 164  
Atwater v. Walker, 171  
Austin v. Imus, 169  
Ayer v. Tilden, 170  
Aymar v. Sheldon, 122, 147, 150  
Bailey v. Heald, 169  
Baker Co. v. Brown, 130, 131  
Ball & Hill v. Cons. Franklinite Co., 171  
Baltimore & Oh. R. Co. v. Baugh, 141  
Bank of America v. Waydell, 141  
Bank of Illinois v. Brady, 169  
Bank of Laddonia v. Bright Coy Com. Co., 90  
Bank of Orange County v. Colby, 143  
Bank of Washington v. Triplett, 143  
Barger v. Farnham, 100, 105  
Basilea & Calandra v. Spagnuola, 64, 72, 105  
Bell v. Packard, 63  
Bissell v. Lewis, 90  
Bowen v. Newell, 143  
Bowers v. Hurd, 28  
Brabston v. Gibson, 105  
Bradlaugh v. De Rin, 136  
Briggs v. Latham, 122  
Bristow v. Sequéville, 103  
Brook v. Vannest, 136, 141  
Brown v. Parker, 164  
Bryant v. Edson, 143  
Burnham v. Webster, 143  
Burr v. Beckler, 64  
Campbell v. Crampton, 64

- Campbell v. Nichols, 171  
Canadian Pac. R. Co. v. Johnston, 165  
Chemical National Bank v. Kellogg, 85  
Chetti v. Chetti, 62  
Clegg v. Levy, 103  
Cockburn v. Kingsley, 64  
Columbia Fire Ins. Co. v. Kinyon, 171  
Continental Nat. Bk. v. Metropolitan Nat. Bk., 46  
Cooke's Trust, *In re*, 62  
Cooper v. Cooper, 62  
Cooper v. Earl of Waldegrave, 169  
Cox v. U. S., 90, 119  
Crawford v. Bank, 122  
Crawford v. Branch Bank of Mobile, 169  
Cribbs v. Adams, 143  
Crichton v. Gibson, 22  
Curtis v. Sprague, 24  
Dacosta v. Davis, 90  
Dalrymple v. Dalrymple, 62  
Don v. Lippman, 164  
Douglas v. Bank of Commerce, 122, 148, 150  
Dunn v. Welsh, 122  
Emanuel v. White, 105  
Embiricos v. National Bank, 48, 137, 139  
Emerson v. Partridge, 105  
Equitable Life Insurance Company v. Clements, 90  
Everett v. Vendryes, 136  
Exchange Bank v. Hubbard, 90  
Fanning v. Consequa, 119  
Fant v. Miller, 91, 103  
First Nat. Bk. v. Falkenhan, 22  
First Nat. Bk. v. Shaw, 63  
Forepaugh v. D. L. & W. R. Co., 141  
Francke & Rasch, *Re*, 159  
Franklin v. Twogood, 141  
Freeman's Bank v. Ruckman, 100, 105  
Freese v. Brownell, 122, 171  
Garretson v. North Atchison Bank, 91  
Garrigue v. Keller, 64  
Gibbs v. Freemont, 124, 169  
Gilbreath v. Bunce, 65  
Gillespie, *In re*, 51  
Gleason v. Thayer, 151  
Glenie v. Smith, 33  
Goodwin v. Robarts, 131  
Gorgier v. Mieville, 131  
Green v. Northwestern Trust Co., 76  
Guernsey v. Imperial Bank of Canada, 148, 151, 153, 175  
Haddock, Blanchard & Co. v. Haddock, 33  
Hager v. National German American Bank, 64



- Hakes v. National Bank, 130  
Hall v. Cordell, 88, 89, 90, 96  
Hammond v. American Express Company, 143  
Harris v. Berry, 65  
Hasling, Succession of, 79  
Hawley v. Sloo, 169  
Healy v. Gorman, 171  
Heidelback, *Ex parte*, 169  
Hellmann's Will, *In re*, 76  
Hibernian National Bank v. Lacombe, 122  
Hill v. Lewis, 33  
Hirschfield v. Smith, 124, 152  
Holbrook v. Vibbard, 148, 150  
Horne v. Rouquette, 155  
Houston v. Keith, 141  
Howenstein v. Barnes, 105  
Huber v. Steiner, 164  
Huey's Appeal, 65  
Hunt v. Jones, 90  
Hunt v. Standart, 105, 122  
Hyatt v. Bank of Kentucky, 130  
International Text Book Co. v. Connelly, 63  
Jackson v. Hudson, 32, 33  
James v. Catherwood, 87, 103  
Jenkins & Sons v. Coomber, 33  
Johnson v. Bank of Fulton, 42  
Johnson v. Lassiter, 22  
Jones v. Dickinson, 70  
Krieg v. Palmer National Bank, 135  
Kuenli v. Elvers, 122  
Lambert v. Jones, 91  
Lang v. Smyth, 131  
Lebel v. Tucker, 135, 136, 138, 139  
Legg v. Vinal, 42  
Lennig v. Ralston, 84, 122, 169  
Limerick National Bank v. Howard, 141  
Liverpool & G. W. Steam Co. v. Phenix Ins. Co., 90  
Livingston v. Hastie, 28  
Lodge v. Phelps, 130  
London Assurance v. Companhia de Moagens do Barreiro, 90  
Lonsdale v. Lafayette Bank, 90  
Ludlow v. Van Rensselaer, 91, 103, 119  
McDonough v. Cook, 33  
Macintosh v. Gibbs, 122, 130  
McMullen v. Rafferty, 22  
Male v. Robert, 61, 63  
Marseilles Extension Ry. & Land Co., *In re*, 136, 138  
Mason v. Dousay, 105  
Mayer v. Roche, 64, 72, 105  
Mercantile Bank of Memphis v. Busby, 33

- Merritt & Myers v. Benton, 42  
Miller v. Tiffany, 76  
Milliken v. Pratt, 63, 64, 74  
Moultrie v. Hunt, 76, 79  
Mullen v. Morris, 169  
National Bank v. Green, 122  
Niagara District Bk. v. Fairman, etc., Mfg. Co., 38  
Nichols v. Porter, 130  
Nichols & Shepard v. Marshall, 63  
Ogden v. Ogden, 62  
Ory v. Winter, 134  
Parks v. Evans, 84  
Pawcatuck National Bank v. Barber, 143  
Peck v. Mayo, 122, 169  
Penny v. Innes, 33  
Perry v. Mt. Hope Iron Co., 90  
Phoenix Mut. Life Ins. Co. v. Simons, 65  
Picker v. London & County Bkg. Co., 131  
Powers v. Lynch, 119, 122  
Prentiss v. Savage, 119  
Price v. Page, 122  
Pritchard v. Norton, 81, 90  
Quaker City Nat. Bank v. Showacre, 85  
Raymond v. Holmes, 122, 148, 150  
Read v. Adams, 122, 148, 150  
Roads v. Webb, 130, 141  
Robarts, *Ex parte*, 51, 168  
Robinson v. Bland, 65, 118  
Robinson v. Mann, 33  
Rose v. Park Bank, 105  
Roseman v. Mahoney, 141  
Rothchild v. Currie, 152  
Rouquette v. Overmann, 124, 158, 159  
Ruding v. Smith, 62  
Russell v. Wiggin, 90  
St. Nicholas Bk. v. State Nat. Bk., 141  
Satterthwaite v. Doughty, 91, 103  
Saul v. His Creditors, 75  
Savings Bank v. National Bank of Commerce, 131  
Scofield v. Day, 169  
Scott v. Perlee, 76  
Scott v. Pilkington, 90  
Seudder v. Union National Bank, 88, 89, 90, 96  
Second National Bank v. Smith, 143  
Second National Bank v. Smoot, 84  
Shaw v. Holland, 33  
Short v. Trabue, 122  
Simonin v. Mallac, 62  
Skinner v. Tinker, 91, 103  
Slacum v. Pomeroy, 169

Smith v. Blatchford, 105  
Smith v. Clarke, 24  
Snow v. Perkins, 150  
Sottomayer v. DeBarros, 62  
Southerland v. Mead, 141  
Spies v. National City Bank, 122  
Stanley v. Bernes, 76, 79  
Steele v. M'Kinlay, 32  
Stephens v. McFarland, 61  
Story v. Lamb, 22  
Strawberry Point Bank v. Lee, 100, 105  
Succession of Hasling, 79  
Swift v. Tyson, 141  
Sykes v. Citizens Nat. Bk., 141  
Taylor v. Kouchakji, 159  
Thompson v. Ketcham, 64, 119  
Thompson v. Taylor, 63, 64  
Thorpe v. Craig, 143, 150  
Towne v. Rice, 85  
Trabue v. Short, 122  
Van Reimsdyk v. Kane, 119  
Vaughan v. Potter, 143  
Vidal v. Thompson, 91, 143  
Walker v. Barnes, 174  
Walsh v. Dart, 143  
Warner v. Citizens Bank of Parker, 148  
Warren v. Citizens Bank, 122  
Warren v. Copelin, 130  
Webster v. Howe Machine Co., 141  
Williams v. Wade, 122  
Williamson v. Colonial Bank, 131  
Wood v. Gibbs, 122  
Woodruff v. Hill, 141  
Woods v. Ridley, 130  
Woodward v. Woodward, 78  
Wooley v. Lyon, 151, 175  
Worcester Bank v. Wells, 90  
Wylie v. Speyer, 131





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## INDEX

- ACCEPTANCE,
  - comparative law, 34.
  - governing law,
    - qualified acceptance, 147.
    - recovery for non-acceptance, 147.
    - revocability, 148.
  - see Form, Presentment for acceptance.
- ACCEPTANCE FOR HONOR,
  - comparative law, 53, 54.
  - governing law, 174.
- ACCEPTOR, CONTRACT OF,
  - comparative law, 49.
  - governing law, see Capacity, Form, Obligation.
  - liability when indorsement is forged,
    - comparative law, 47.
    - governing law, 135.
  - liability when original instrument is void, 100.
- ACT OF GOD,
  - comparative law, 44.
  - governing law, 156.
- ALTERATIONS,
  - comparative law, 50.
- ALTERNATIVE RULES, 74, 76-77, 79-83, 96-98, 139-140, 142, 157.
- AMOUNT OF RECOVERY,
  - see Damages.
- ARGENTINA,
  - capacity, 68.
  - formal and essential validity, 94.
  - obligation, 107.
- ASSOCIATION FOR THE REFORM AND CODIFICATION OF INTERNATIONAL LAW,
  - capacity, 70.
- AVAL,
  - comparative law, 32.
- BARTOLUS,
  - form, 96.
  - obligation, 114.
- BILLS IN A SET,
  - comparative law, 56.
- BILLS OF EXCHANGE ACT,
  - text of, 215.
- BRAZIL,
  - capacity, 69.

**BRAZIL**—Continued,

- formal and essential validity, 95.
- obligation, 107.

**CALENDARS,**

- see Maturity.

**CAPACITY,**

- comparative law, 57, 61.
- governing law, 61.
  - alternative rules, 74, 76-77, 79-83.
  - infants' contracts, 64.
  - intention of parties, 72.
  - lex domicilii*, 70, 72, 78.
    - criticism of, 72.
  - lex loci contractus*, 72, 74, 77-78.
  - lex loci solutionis*, 72.
  - lex patriae*, 72.
    - criticism of, 72.
  - positive law, 61.
    - Argentina, 68; Brazil, 69; Chile, 69; Convention of Montevideo, 68; England, 61; France, 65, criticism of, 72, 73; Germany, 66, criticism of, 72, 73; Italy, 67; Japan, 69; Quebec, 70; United States, 63.
  - rules proposed by Association for the Reform and Codification of International Law, 70; Bar, 71, criticism of, 73; Burge, 72, 75; Cheng, 74; Congress of commercial law of Brussels, 71; Field, 77; Goldschmidt, 71, 73, 74; Hague Convention, 70; Institute of International Law, 71, criticism of, 73; Jitta, 71; Story, 75; Westlake, 71, criticism of, 73.
  - views expressed by Lord Eldon in *Male v. Roberts*, 61; by Mr. Justice Gray in *Milliken v. Pratt*, 74; by Chancellor Kent in *Thompson v. Ketcham*, 64.

**CHILE,**

- capacity, 69.
- formal and essential validity, 95.
- obligation, 108.

**CONFLICT OF LAWS,**

- Hague Convention and Uniform Law, 57.

**CONGRESS OF COMMERCIAL LAW OF ANTWERP,**

- capacity, 70.

**CONGRESS OF COMMERCIAL LAW OF BRUSSELS,**

- capacity, 71.

**CONSIDERATION,**

- comparative law, 28.
- governing law, 140.

**CONVENTION OF THE HAGUE,**

- see Hague Convention.

**COPIES,**

- comparative law, 56.

**COVER,**

- comparative law, 29.
- governing law, 134.

**DAMAGES,**

comparative law, 50.

governing law, 167.

England, 168; France, 169; Germany, 169; Institute of International Law, 173; United States, 169.

**DATE,**

comparative law, 25.

**DEFENCES,**

comparative law, 50.

governing law, 134.

**DELIVERY,**

comparative law, 26.

presumption as to place of, 84.

**DESIGNATION AS BILL OR NOTE,**

comparative law, 24.

**DRAWER, CONTRACT OF,**

comparative law, 47, 49.

governing law,

see Capacity, Form, Obligation.

liability when indorsement forged,

comparative law, 47.

governing law, 135.

**ENGLAND,**

amount of recovery, 168.

capacity, 61.

formal and essential validity, 87.

independence of different contracts, 121.

law governing holder's title, 135.

maturity, 143.

obligation, 104.

presentment for acceptance, 145.

time and mode of presentment, protest and notice, 150.

time within which recourse must be taken, 164.

**ESSENTIAL AND FORMAL REQUISITES, 92, 95, 99, 100.****FORM,**

comparative law, 20-26.

of acceptance, 34.

of bill or note, 20-26.

additional provisions or clauses, 26.

date, necessity of, 25,

designation as bill or note, 24.

drawee, name of, 25,

drawer, signature of, 26,

installments, 21.

maturity, indication of, 25.

money, 21.

payable to bearer, 22.

payable to order, 21.

payee, name of, 25.

place of issue, indication of, 25.



## FORM—Continued,

- place of payment, indication of, 25.
- sum certain, 20.
- unconditional order or promise to pay, 20.

## governing law,

- alternative rule, 96-98.
- intention of parties, 90.
- lex loci contractus*, 95.
- exceptions to rule, 100.
- mandatory character, 96, 98.

## positive law,

- Argentina, 94; Brazil, 95; Chile, 95; Convention of Montevideo, 94;
- England, 87; France, 91; Germany, 92, criticism of, 98; Italy, 94,
- criticism of, 98; Japan, 95; United States, 87.

## rule proposed by,

- Despagnet, 98; Hague Convention, 95; Institute of International Law,
- 96, 99.

## stamps, requirement of,

- comparative law, 58.
- governing law, 103.

- views expressed by Mr. Justice Hunt in *Seudder v. Union National Bank of*
- Chicago*, 88; by Mr. Justice Harlan in *Hall v. Cordell*, 89.

## FRANCE,

- amount of recovery, 169.
- capacity, 65.
- formal and essential validity, 91.
- independence of different contracts, 122.
- obligation, 105.
- time within which recourse must be taken, 165.

## GERMANY,

- amount of recovery, 169.
- capacity, 66.
- formal and essential validity, 92.
- independence of different contracts, 122.
- maturity, 143.
- obligation, 106.
- time and mode of presentment, protest and notice, 151.
- time within which recourse must be taken, 166.

## GRACE, DAYS OF,

- comparative law, 38.
- governing law, 142.

## GUARANTY OF BILLS AND NOTES,

- comparative law, 32.

## HAGUE CONVENTION,

- capacity, 70.
- formal and essential validity, 95, 99.
- history of, 17.
- maturity, 144.
- text of, 251.
- time and mode of presentment, protest and notice, 151.
- vis major*, 156.

## HOLDER'S TITLE,

- comparative law, 47.
- governing law, 135.

## HOLDER IN DUE COURSE,

- comparative law, 28.
- law governing, 140.

## INDEPENDENCE OF DIFFERENT CONTRACTS, 121.

- positive law, 121-123.
  - England, 121; France, 122; Germany, 122; Italy, 122; Japan, 123;  
Latin America, 123; United States, 122.
- limits of doctrine, 128.
  - holder's duty to protest, 133.
  - negotiability with respect to subsequent parties, 129.

## INDORSEMENT,

- comparative law, 30.
- after maturity, 32.
- by way of pledge, 31.
- forged indorsements,
  - comparative law, 47.
  - governing law, 135.
- governing law,
  - see Form.

## INDORSER, CONTRACT OF,

- comparative law, 49.
- governing law,
  - see Capacity, Form, Obligation.
- liability when original instrument void, 100.
- liability when indorsement forged,
  - comparative law, 47.
  - governing law, 135.

## INSTITUTE OF INTERNATIONAL LAW,

- capacity, 71, 73.
- damages, 173.
- form, 96, 99.
- independence of different contracts, 125.
- necessity of presentment, protest and notice, 126, 149.
- obligation, 121, 125, 126.
- presentment for acceptance, 146.
- statute of limitations, 166.
- substitute for protest, 150.
- time for presentment, protest and notice, 126, 155.
- time within which recourse must be taken, 126, 166.

## INTERNATIONAL HIGH COMMISSION, 18, 83.

## INTERPRETATION,

- comparative law, 27.
- governing law,
  - see Obligation.

## ITALY,

- capacity, 67.

## ITALY—Continued,

- formal and essential validity, 94.
- independence of different contracts, 122.
- maturity, 144.
- obligation, 106.
- presentment for acceptance, 146.
- time and mode of presentment, protest and notice, 151.
- time within which recourse must be taken, 166.

## JAPAN,

- capacity, 69.
- formal and essential validity, 95.
- independence of different contracts, 123.
- obligation, 108.
- time and mode of presentment, protest and notice, 151.

*LEX LOCI CONTRACTUS*,

- meaning of, 83.

## LIMITATIONS, STATUTE OF,

- comparative law, 53.
- governing law, 164.

*LOCUS REGIT ACTUM*,

- its mandatory character, 96, 98.
- exceptions thereto, 100.

## MAKER, CONTRACT OF,

- comparative law, 58.
- governing law,
  - see Capacity, Form, Obligation.
- liability when indorsement forged,
  - comparative law, 47.
  - governing law, 135.

## MATURITY,

- comparative law, 38.
- governing law, 142.
  - England, 143; Germany, 143; Hague Convention, 144; Italy, 144; United States, 143.

## MONTEVIDEO, CONVENTION OF,

- application of, 68.
- capacity, 68.
- formal and essential validity, 94.
- independence of different contracts, 123.
- obligation, 106.
- time and mode of presentment, protest and notice, 151.
- time within which recourse must be taken, 166.

## MORATORY LAWS, 158.

## NEGOTIABILITY,

- comparative law, 21, 22.
- governing law,
  - as regards subsequent parties, 129.
  - see Obligation.

## NEGOTIABLE INSTRUMENTS LAW,

- text of, 179.



## NEGOTIATION,

- comparative law, 30.
- effect of negotiation in another state, 134.

## NOTICE,

- comparative law, 43.
  - when excused,
    - act of God, 44.
    - other excuses, 45.
- governing law,
  - necessity of, 148.
  - time and mode of, 150.
    - Convention of Montevideo, 151; Convention of the Hague, 151; England, 150; Germany, 151; Italy, 151; Japan, 151; United States, 150.

## OBLIGATION,

- defences, 134.
- effect of negotiation in another state, 134.
- governing law, 104-121.
  - lex domicilii*, 109.
  - lex loci contractus*, 109, 112, 114-118, 120.
  - lex loci solutionis*, 109, 120.
  - lex patriae*, 108.
- see Independence of different contracts.
- positive law,
  - Argentina, 107; Brazil, 107; Chile, 108; Convention of Montevideo, 106; England, 104; France, 105; Germany, 106; Italy, 106; Japan, 108; United States, 105.
- Roman law, 112.
  - views of Bar, 112; Fiore, 112; Savigny, 112; Story, 112; Wächter, 113.
- rules proposed by Bar, 110; Bartolus, 114; Bouhier, 116; Boullenois, 115; Burgundus, 118; Dumoulin, 115; Everhard, 114, 118; German bar association, 110; Hert, 116; Huber, 114, 118; Institute of International Law, 121; Pothier, 115; Sande, John à, 117; Savigny, 110; Story, 112; P. Voet, 114.
- theory that a single law should control all contracts, 124.
  - Daniel's view, 125; Minor's view, 124; resolution of Institute of International Law, 125.
- views expressed by Lord Mansfield in *Robinson v. Bland*, 118.

## PAYMENT,

- comparative law, 52.
- governing law, 162.
- into court,
  - comparative law, 52.
  - governing law, 163.
- part payment,
  - comparative law, 52.
  - governing law, 163.
- see Presentment for payment.
- through clearing house, 163.

## PAYMENT FOR HONOR,

comparative law, 53, 54.

governing law, 174.

## PERSONAL STATUTE, 83.

## PRESENTMENT FOR ACCEPTANCE,

comparative law, 34.

when excused,

act of God, 44.

other excuses, 45.

governing law, 145.

England, 145; France, 146; Italy, 146.

## PRESENTMENT FOR PAYMENT,

comparative law, 40.

when excused,

act of God, 44.

other excuses, 45.

governing law,

necessity of, 148.

time and mode of, 150.

Convention of Montevideo, 151; Convention of the Hague, 151;

England, 150; Germany, 151; Italy, 151; Japan, 151; United

States, 150.

## PROMISSORY NOTES,

comparative law, 58.

## PROTEST,

comparative law, 40.

when excused,

act of God, 44.

other excuses, 45.

governing law,

necessity of, 148.

substitute for, 150.

time and mode of, 150.

Convention of Montevideo, 151; Convention of the Hague, 151;

England, 150; Germany, 151; Italy, 151; Japan, 151; United

States, 150.

## PUBLIC POLICY,

capacity,

infants, 63, 64.

married women, 63, 64.

formal validity, 103.

negotiability as regards subsequent parties, 132.

## QUEBEC,

capacity, 70.

## RECOURSE FOR NON-ACCEPTANCE AND NON-PAYMENT,

comparative law, 39.

governing law,

time within which recourse must be taken, 164.

Anglo-American law, 164; Convention of Montevideo, 166; France,

165; Germany, 166; Italy, 166.

- RECOURSE FOR NON-ACCEPTANCE AND NON-PAYMENT—Continued,  
remedies when recourse lost,  
    comparative law, 46.  
    governing law, 128.
- REFEREE IN CASE OF NEED,  
    comparative law, 53.
- RELATIONSHIP OF DIFFERENT CONTRACTS,  
    see Independence of different contracts.  
    positive law,  
        Convention of Montevideo, 123; England, 121; France, 122; Germany,  
            122; Italy, 122; Japan, 123; United States, 122.  
    theory that a single law should govern, 124.  
    Daniel's view, 125; Minor's view, 124.
- RENVOI*, 175.
- ROMAN LAW,  
    obligation of contracts, 112.
- STAMP REQUIREMENTS,  
    comparative law, 58.  
    governing law, 103.
- TITLE OF HOLDER,  
    comparative law, 47.  
    governing law, 135.
- UNIFORM LAW OF HAGUE CONVENTION,  
    comparison with Anglo-American law, 20-58.  
    comparison with bills of exchange act, 19.  
    comparison with Negotiable Instruments Law, 19.  
    text of, 264.
- UNIFORM NEGOTIABLE INSTRUMENTS ACT,  
    text of, 179.
- UNITED STATES,  
    amount of recovery, 169.  
    capacity, 63.  
    formal and essential validity, 87.  
    independence of different contracts, 122.  
    maturity, 143.  
    obligation, 105.  
    time and mode of presentment, protest and notice, 150.  
    time within which recourse must be taken, 164.
- VIS MAJOR*,  
    comparative law, 44.  
    governing law, 156.
- VALIDITY,  
    essential, 99.  
    see Capacity, Form.
- WARRANTIES,  
    comparative law, 49.

















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